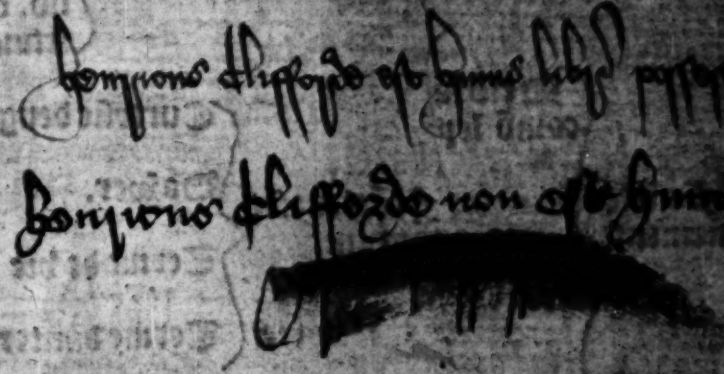
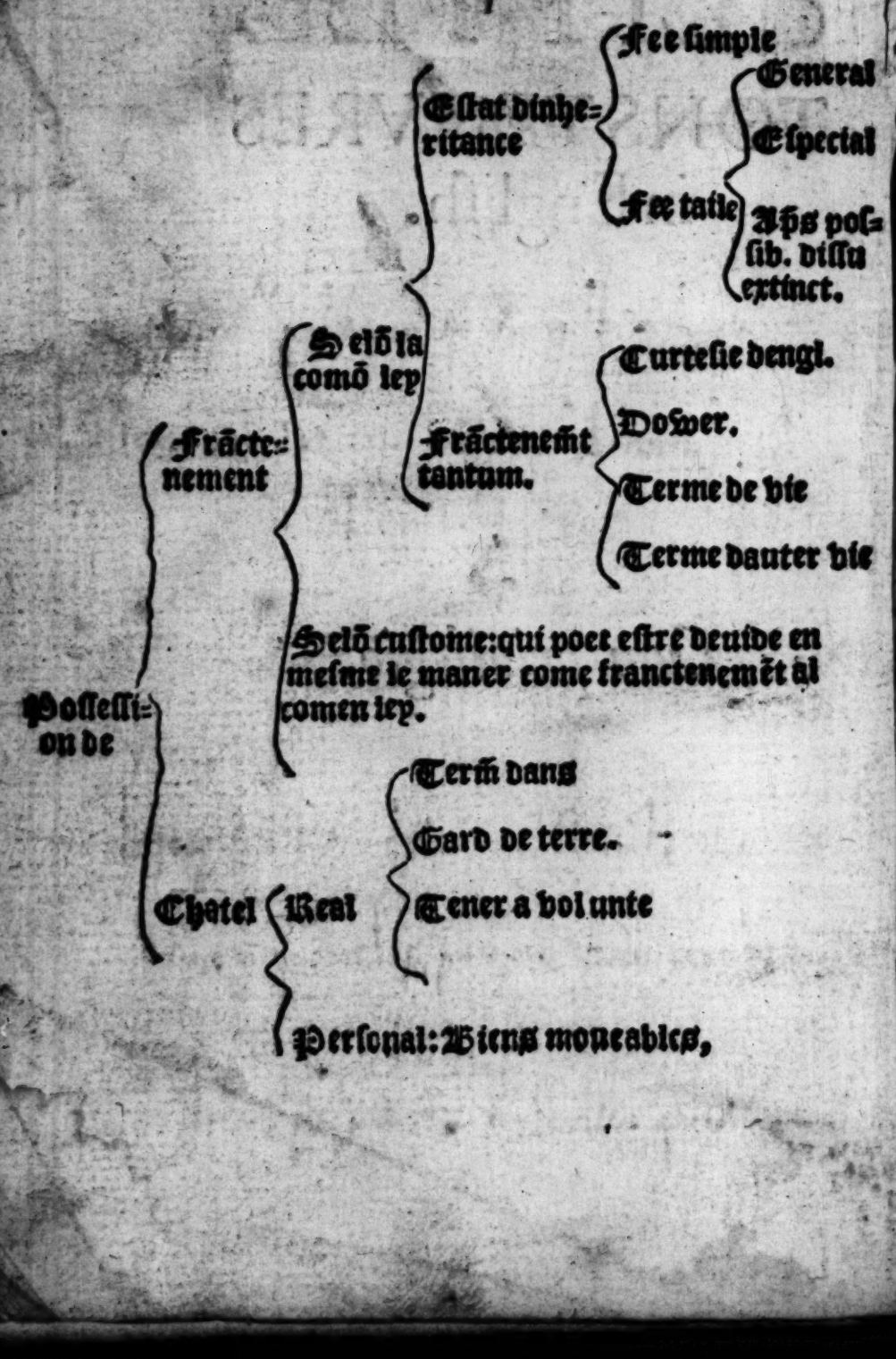
LITTLE TONS TENVRES in English.



Cum priuilegio.

A figure of the diuision of possessions.



TEnant in fee simple is hee whych hath lands or tenements to holde to hym and to his heires for euer.

¶ And it is called in Latin Feodum simplex, for Feodum is called inheritaunce and simplex is as much to say, as lawfull or pure, and so Feodum simplex is as much to saye as lawfull or pure inheritaunce. For if a manne will purchase landes or tenementes in fee simple, it behoueth hym to haue these wordes in his purchase, to haue and to holde vnto hym & to his heires, for these wordes (his heires) make the estate of inheritaunce. Anno 10. H. 6. Folio 38.

¶ For if any man purchase landes by these wordes to haue and to holde to him for euer, or by such wordes to haue and to holde to him and to his assignes for euer. In these two cases hee hath none estate but for terme of lyfe, for that he lacketh these wordes (his heires) which wordes onely make the estate of inheritance in al feoffements and graunts.

¶ And if a man purchase landes in fee simple and dye without issue, euerye one that is his next cosin collateral of the whole blonde, how farre so euer that he be from him of degree, may enherite and haue the same lande as heire to him. But if there be father and sonne, and the father hath a brother, which is vncle vnto the sonne, and the sonne purchaseth lande in fee simple, and dyeth without issue lyuinge the father, the vncle shall haue the lande, as

heire vnto the sonne, & not the father: (yet the father is more nighe of bloud vnto the sonne) for that that there is a ground in the law, that inheritance may lineally descend, but not lineally ascend, yet if the sonne in such case dye without issue & his vncle entreth into ỹ lād as heire vnto the sonne (so as he ought by the law) and after if the vncle decease without issue liuinge the father, then shal the father haue the land as heire vnto ỹ vncle, & not as heire vnto the sōne, for that ỹ he commeth vnto the lande by collateral discent, & not by lineal ascention.

And in such case where the sonne pourchaseth land in fee simple, and dieth without issue, they of his bloud on the fathers side shall inherite as heire vnto him, before any of the bloud of the mothers syde. But if he haue no heire on the fathers syde, then shall the lande discende vnto his heire on the mothers syde. And thys is the oppinion of the Justices My. 12. E. 4. folio 34. But there it was holden if any lande discende vnto a man by the fathers syde which dyeth without issue, that his next heir on the fathers side shal inherite vnto him, that is to saye, the next of bloud of the father of ỹ grand fathers side. And for defaut of such an heire, they that be of the fathers bloud of ỹ parte of the mother of the father (that is to say) the grādmother ought to enherite. And if there be no such heire on the fathers side, then the lorde shal haue the lande by eschete. And so it is if a man take a wife inherite in fee simple,

which

ſwhich hath iſſue a ſonne & dyeth, & ỹ ſonne entreth into the tenements as ſonne & heire vnto his mother, and after dyeth without iſſue, the heires on the mothers ſide ought to enherite the tenementes, and not the heires on the fathers ſide.

And if there bee no heires on the mothers ſide, then the lord of whō ỹ ſame land is holden, ſhal haue the ſame land by eſchete. In the ſame māner it is if lāds diſcende vnto ỹ ſōne on ỹ fathers ſide, which entreth, & after dieth without iſſue, the land ſhal diſcend vnto ỹ heires on ỹ fathers ſide, & not vnto the heires on the mothers ſide. And if there be none heires on the fathers ſide, then the lord of whom the lād is holden, ſhall haue the ſame land by eſchete. And ſo ye may ſee the diuerſitie, where ỹ ſōne purchaſeth lands in fee ſimple, & where he cō-meth vnto thoſe lands or tenements by diſcēt on the father ſide or on the mother ſide.

5 Alſo if there be three brethren, & the middle brother purchaſeth lande in fee ſimple & dyeth without iſſue, the elder brother ſhall haue the land by diſcent & not the yonger. Alſo if there be three brethren, & ỹ yongeſt brother purchaſeth land in fee ſimple & dieth without iſſue: ỹ elder brother ſhall haue the land by diſcent, and not the middle brother, for that ỹ the elder brother is more worthy of blond.

6 And it is to bee vnderſtoode that no man ſhal haue land in fee ſimple by diſcent as heire vnto anye man, vnleſſe hee bee hys heire of the whole blond. For if a man haue iſſue two ſonnes by 2. bentres and the elder purchaſeth

lande in fee simple and dyeth without issue, the yonger brother shal not haue the land but the vncle of the elder brother or some other hys nigh cosin shall haue it, for that ỹ the yonger is but of the halfe bloude to the elder brother. And if a man haue a sonne and a daughter by one ventre, and a sonne by an other ventre, and the sonne by the first venter purchaseth lande in fee simple and dyeth without issue, the sister shal haue the lande by discent as heire vnto her brother and not the yonger brother, for that ỹ the sister is of the whole bloud to her elder brother.

And also where a man is seysed of lande in fee simple, and he hath issue a sonne & a daughter by one venter and a sonne by another venter and dyeth, and the elder sonne entreth, and dieth without issue, the daughter shal haue the lande and not the yonger sonne, and yet is the yōger sōne heire vnto his father but not vnto his brother. But if ỹ elder sōne enter not into the lande after the death of his father, but dyeth before entre be made by him, then the yonger brother maye enter and haue the lande as heire vnto hys father. But where the elder sonne in the case aforesayde, entreth after the death of his father and thereof haue possession, then the syster shall haue the lande. Quia possessio fratris de feodo simplici facit sororem esse heredem. For the possessyon of the brother in fee simple maketh the sister to be heire.

But if there bee twoe brethren by dyuers ventres,

heires, and the elder is seised in fee simple & dyeth without issue, and his vncle entreth as heire vnto him, which also dyeth wythout issue, then the yonger brother may haue the lād as heire vnto his vncle, because hee is of the whole blood to him though he bee but of halfe bloud vnto his elder brother.

And it is to be vnderstoode, that this word inheritaunce, is not onely vnderstoode where a man hath landes or tenementes by dyscent of heritage. But also euerye fee simple or fee tayle that a man hath by his purchase, may bee said inheritance. for that, that his heires maye inherite him. For in a writ of right that a man bringeth of lande, that was of his owne purchase, the writ shall saye: Quam clamat esse ius & hereditatem suam. That is to saye, whyche hee claymeth to bee his ryghte and his inheritaunce. And so it shalbee saide in dyuers other writtes whiche a man or a woman bryngeth of their owne purchase, as it appeareth by the Register.

And of suche thinges as a man maye haue a manuel occupation, possession, or reseyte, as of landes, tenementes, reates, and suche other, a man shall say in his pleading, and waye of barre, that one such was seised in his demesne as of fee. But of suche thinges as ye not in manuel occupation &c. as of aduowson of a Church, and such manner thing: there hee shal saye, that hee was seised as of fee, and not in hys demesne as of fee. And in latine it is in

the same case saide. Quod talis fuit seisitus in dominico suo vt de feodo, that is to saye, that such one was seysed in hys demeane as of fee, and in the other. Quod talis fuit seisitus vt de feodo, that is to saye, that one suche was seysed as of fee.

And note well that a man maye not haue a moze large ne greater estate of inheritãce, then fee simple.

Also, purchase is called the possession of landes oz tenements that a man hath by his dede oz by hys agreement, vnto whych possessyon hee commeth, not by discent of anye of hys auncesters, oz of hys cosins, but by his owne deede.

¶ Fee tayle.

TEnaunt in fee tayle is by force of a statute of Westminster the second, Capit primo. For at the common lawe before the said statute, al inheritances were fee simple. For all the gifts whych bene specified within the same statute, were fee simple conditionally, as it appeareth by the rehearsal of ỹ statute. And now by the same statute, tenant in the taile is saide in two mãners, that is to say, tenant in taile generall and tenant in taile special.

Tenaunt in taile generall is, where landes oz tenementes bee geeuen to a man and to hys heires of his body begotten. In this case it is saide generall taile, for that that whatsoeuer woman that the tenaunt taketh to wyfe, if hee haue many wiues, and by eche of them hath

issue

ſſiue, yet eche one of theſe iſſues by poſſibilitie maye enherite the tenementes by force of the ſaide gift, becauſe that euerye ſuche iſſue is of his body engendred.

In the ſame mãner it is, where lands & tenementes bee geeuen to a woman and to the heires comming out of her bodie, howbeit that thee haue manye huſbandes, yet the iſſue that thee maye haue by eche huſbande, may inherite as iſſue in the taile, by force of ſuch giftes. And therefore ſuche gyftes beene called generall taile.

Tenaunt in taile ſpeciall, is where landes and tenementes bee geeuen vnto a man and hys wyfe and the heires of theire two bodyes begotten. In ſuche caſe none maye inheryte by force of ſuche gifte, but thoſe that bee engendred betweene them two, and it is called eſpecial tayle, for that if the wyfe dye, and he taketh an other wyfe and hath iſſue, the iſſue of the ſecond wyfe ſhall neuer inherite by force of ſuche gyfte. Nor alſo the iſſue of the ſeconde huſbande if the firſt huſbande dye.

In the ſame maner it is, where landes and tenementes bee geeuen by a man vnto an other wyth a wyfe, whiche is the daughter or coſin to the geeuer, in franke maryage, whych gifte hath inheritance by theſe wordes (franke mariage) vnto it annnexed, howbeit that they bee not expreſſely ſaid or rehearſed in the gifte that is to ſaye, that theſe donees ſhall haue theſe landes or tenementes to them & to theire

heires

heires betwene the two engendred, & thys ys sayd especial taile, for that the issue of the secod wife may not inherite.

And note well, that this woorde talliare, is to say to set vnto some certeintye, or els limitte vnto some certeine inheritaunce. And for that that it is limitted & set in certaine, what issue shall inherite by force of suche gifres, and howe long that the inheritaunce shall endure. Therfore it is called in latine, Feodum talliatum. I. hereditas in quadam certitudine limitata. For if tenant in generall taile dye without issue, the donour or his heires shall inherite as in their reuersion, in the same wyse is it of the tenant in the taile especial &c. For in euery gift of ỹ tayle without more saying, the reuersion of fee simple is in the donour.

And the donees and theire heires shall doe to the donour and to hys heires, suche seruices as ỹ donour doth vnto his Lorde next aboue. Except the donees in franke mariage, whyche shall holde quietly from euery manner seruice, (vnlesse it be for fealtye) vntill the fourth degree be past. And after that the fourth degree is past the issue in the fift degree, and so forth the other issues after hym, shal hold of the donour and of his heires as they hold ouer, as is aforesaid.

And the degrees in franke mariage shalbee accompted in suche maner, that is to say, from the donour to the donees in franke mariage the first degree, for that that the wyfe that is one

of

of the doneés oughte to bee daughter, sister, or other colyn to the donoure. And from the donees vnto their issue shalbee accompted the second degree. And from their issue vnto theire issue, the third degree & so forth &c.

And the cause is, for that after euerye suche gifte, the issues that come of the donoure, and the issues that come of the donees after the fowerth degree past of bothe parties in suche fourme to bee accompted, maye betwixt them by the lawe of holye Church inter marie. And that the donee in franke mariage shalbee the first degree of the fower degrees, a man maye see in a plee vppon a writte of ryght of warde, Anno 31. Edwar. 3. where the playntife pleadeth that his ayel or graundfather was seysed of certaine landes &c. And that hee helde of an other by knightes seruice &c. which gaue the lande vnto one Raufe Hollande with his sister in franke mariage &c. And also these tailes before saide, be specified in ỹ said estatute of Westminster the second.

And there bee dyuers other estates in the taile, howe be it that they bee not specified by expresse wordes in the saide estatute, but they bee taken by the equitie of the statute, as if landes be geuen vnto a man and to his heires males of hys bodie engendred. In suche case hys heire male shall inherite, and the issue female shall neuer inherite, yet in these other tailes aforesaide it is otherwise. In the same maner it is if landes bee geeuen to a man and

to

to his heires females of his bodye engendred. In this case his issue females shall enherite by force and fourme of the saide gyft, and not the issue male, for that in such cases where the gift is who ought to enherite and who not, the will of the donour shalbee obserued. And in case where landes bee geeuen vnto a man and to his heires males issuynge of hys body and hee hath issue two sonnes and deceaseth, the elder sonne entreth as heire male, and hath issue a daughter & deceaseth, his brother shall haue the lande and not the daughter, for that the brother is heire male. But it shalbe otherwise in these other tailes aforesaide, which ben specified in the said estatute, the daughter shal enherite before the brother.

And if landes be geeuen vnto a man, and to hys heires males of hys bodye engendred and hee hath issue a daughter, whych hath issue a sonne and deceaseth, and after that the donour deceaseth: in this case the sonne of the daughter shal not inherite by force of the taile. for that whosoeuer shall enheryte by force of a gyfte in the tayle made vnto his heires males, behoueth to conuey hys dyscent alwaye by the males. M. decimo octauo Edwardi tertij folio 45. But in suche case the donour shall enter for that the donee is dead wythoute issue male in the lawe. In so muche that the issue of the daughter maye not conueye to hym the dyscente by heire male. And in the same maner it is where landes bee geeuen to a man and to his wife and to his heires

males

males of their two bodies ingendred.

Also if tenementes bee geeuen to a man and his wife, and to the heires of the bodye of the man engendred, in this case the husbande hath estate in the generall taile & the wife but estate for terme of life.

Also if landes bee geeuen to the husbande and to the wyfe, and to the heires of the husbande which hee engendreth of the bodye of the wyfe. In this case the husband hath estate in the speciall taile, and the wyfe but for terme of lyfe.

And yf the gyfte bee made to the husbande and to the wyfe, and to the heires of the wyfe of her bodye by the husbande engendred. then the wife hath estate in the special taile, and the husband but for terme of life. But if landes bee geeuen to the husbande and the wife, & to the heires that the husbande engendrethe on the bodye of the wyfe: In this case bothe haue estate in the taile, for that this worde (heires) is lymitted no more to the one then to the other.

Also if landes bee geeuen to a man and to hys heires that hee engendreth on the bodye of his wyfe, in this case the husbands hath estate in the tayle speciall, & the wyfe nothinge.

Also if a man haue issue a sonne, and deceaseth, and the lande is geuen to the sonne, and to the heires of the body of his father engendred, this is a good taile, & yet the father was dead at the tyme of the gift.

Also

¶ Also there be many other estates in ſ taile by the equitie of the sayde estatute that bee not specyfied here. But if a man geeue landes or tenementes to another to haue and to holde to him and to his heires males, or to hys heires temales, hee to whom such gift is made hath fee simple, for that it is not symitted by the gift of what body the issue male or female shal be, and so it may not in any thinge be taken by the equitie of the said estatute, and therefore hee hath fee simple.

¶ Tenant in taile after possibilitie of issue extinct.

TEnaunt in the tayle after possibilitie of the issue extinct, is where as lands or tenemēts be geeuen vnto a man and to his wife in special taile, if one of them decease without issue, hee that surueyeth is tenant in the tayle after possibilitie of issue extinct. And if they haue issue duringe the lyfe of the issue, hee that surueieth shal not bee sayd tenaunt in the tayle after possibylitie of issue extinct, yet if the issue decease, without issue, so that there be none alyue that may inherite by force of the taile, then hee that surueieth of the donees is tenaunt in the tayle after possibilitie of issue extinct.

¶ Also if landes bee geeuen to a man and to his heires that bee engendred on the bodye of hys wife. In this case the wife hath nought in the tenementes, and the husbande is seyſed

sed as donee in special taile. And in this case if the wyfe decease without issue of her body engendered by her husbande, then the husband is tenaunt in the tayle after possibylitye of yssue extincte.

¶ And note well, that none may bee tenaunt in the tayle after possybilitie of yssue extincte, but one of the donees, or the donee in speciall tayle, for the donee in generall taile may neuer be sayde tenaunt in the tayle after possibilitie of issue extinct. for that alway during his lyfe, hee may by possibilitie haue issue that may inherite by force of the same taile. And so in the same maner the issue that is heire vnto the donees in a special tayle, may not bee sayde tenaunt in taile after possibilitye &c. causa qua supra.

¶ And tenant in taile after possibilitie of issue extinct shal neuer bee punished of waste, for the inheritaunce that once was in him An. 10. H. 6. fo. 1. But he in the reuersion may enter if hee doth alien in fee. An. 45. E. 3. fo. 22.

¶ Tenant by the curtesie of Englande.

TEnaunt by the curtesye of Englande, is where a man taketh a wyfe seyzed in fee simple. or in fee taile generall, or as heire in the tayle speciall, and hath issue by the same wife, male or female. ¶ The issue after beeinge dead or alyue, if the wyfe decease, the husband shal hold the same duringe his life by the law

of

of England, & this is called tenant by the curtesy, for that it is not vsed in any other realme but onely in Englande. And some say that it shall not be said tenāt by the curtesye, but if the childe ỹ he hath by his wife be hard cry, for by the cry is the proue that the childe that hee had by his wife, was borne.

¶ Tenant in Dower.

TEnant in Dower is, where a man is seised of certein landes or tenements in fee simple or in taile generall, or as heire in ỹ taile especyall and taketh a wyfe and deceaseth, the wife after the decease of her husbande shall bee endowed of the thirde parte of such landes or tenements that weare her husbandes any tyme duringe the couerture, to haue and to holde to the same wyfe in seueraltye by metes and bondes for terme of her lyfe, whether shee haue by her husbande issue or none, and of what age that the wyfe bee, so that shee passe the age of nine yeres at the time of her husbandes deathe. or
37 els shee shall not bee endowed. And note wel, that by the cōmon lawe the wife shal not haue for her dower but the thirde parte of the tenementes, which were her husbands during the espousels. By custome of some countrey shee shall haue the halfe, and by custome of some towne or borroughe, shee shall haue the whole, and in al these cases shee shal bee sayd tenaunt in dower.

Also

Also there is two other maner of dowers, 38.
that is to say, dower called dowement at the
church doze, and dower called dowement by
the fathers assent. Dowment at the Church 39.
doze, is where a man of full age is seised in fee
simple which shalbee wedded vnto a wyfe,
when hee commeth to the church doze, and
there after affiance, and trueth pleyght made
betweene them, endoweth his wyfe of his
whole lande, oz of the halfe, oz lesse parcel, and
there openly declareth the quantitie, & cer-
tainty of his lande that shee shal haue foz her
dower. In this case the wife after the death
of her husbande shal enter into the sayd quan-
titie of lande, of which her husband endowed
her without the assignement of any manne.
Dowement by the fathers assent is, where 40
the father is seyled of tenementes in fee, and
his sonne and heire apparaunt (when hee is
wedded) endoweth his wife at the Churche
doze of parcel of the landes oz tenementes of
his fathers, by thassent of his father, and as-
signeth the quantitie of the parcels: In this
case after the death of the sonne, the wife shal
enter into the same parcel without ỹ assigne-
ment of any other. But it hath ben said in this
case that it behoueth the wife to haue a deede
of the father, yzouinge his assent and consent
of such endowment. And if after the death 41.
of her husbande shee enter and agree to anye
such dower of the sayd two dowers at the
charch doze, then shee is concluded to claime

any other Dower by the common lawe of any landes or tenementes, which were of the sayd husbande. But if shee will, shee may refuse such dower at the Church doore, and then shee may bee endowed after the course of
42 the common lawe. And note well, that no wife shalbee endowed of the fathers assent in the fourme aforesayde, saue where the husbande is sonne and heire apparaunt to his father.

¶ Inquire of these two cases of Endowement at the Church doore &c. if the wyfe at the time of the death of her husband passe not the age of nine yeres, if she shal haue such Dower or no.

43 ¶ And note well, that in al cases where the certayntie appeareth what landes or tenementes the wyfe shal haue for her dower, the wyfe may enter after the death of her husbande without assygnement of anye other. But where the certeyntie appeareth not, as to bee endowed of the thirde parte, to haue in seuerall, or to bee endowed of the halfe after the custome, to holde in seueraltie: In such cases it behoueth that her Dower bee vnto her assigned after the death of her husband, because it is not tempted before the assignement what partes of landes or tenementes
44 shee shall haue for her dower. But if there be two Iointenaunts of certayne landes in fee, and the one alyeneth that that to him pertayneth and belongeth, to another in fee, which

taketh

taketh a wife, and after dyeth: In this case the wyfe for her dower shall haue the thirde part of the halfe that her husband purchased, to holde in common, and occupie in common as her part amounteth, with the heire of her husbande, and with the other Joyntenaunt whych alyened not, for that in such case her dower may bee assigned by metes and bounces.

¶ And it is to bnderstood, that the wife shal 45.
not be endowed of landes or tenementes that her husbande joyntly held with another at the time of his death. But where hee holdeth in common otherwise it is, as in the case aforesayd. And it is to witte, that if the tenant in 46
taile endowe his wyfe at the church doore as it is aforesaid, ỹ shal serue for litle or naught to the wife, for that that after the death of her husband the issue in the tayle may enter vpon the possession of the wife, and so may heir the reuersion if there be no issue in the taile alive.
¶ Also if a man seised in fee simple being 47
in age, endowe his wyfe at the Church doore and dieth, and the wife entreth. In this case ỹ heire of her husband may put her out. But otherwise it is as it seemeth where the father is seised in fee, & the sonne within age endow his wife of his fathers assent, the father then being of ful age.
¶ And there is another Dower which is 48
called Dowement de la Pluis beale. And that is in such case that a man is seised

of xl. acres of lande, and hee holdeth xx. of the said xl. acres of one man by knyghtes seruice, and the other xx. acres of an other in socage, & taketh a wife, & hath issue a sonne, and dyeth, his sonne beinge within the age of 14. yeares, and the lord of whom the lande is holden by knightes seruice entreth into the xx. acres of lande holden of him. and them hath and occupieth as warden in chiualry duringe the childes nonage, and the childes mother entreth in the remnant, and it occupieth as garden or warden in Socage, If in this case the wyfe bringe a writte of Dower against the warden in chiualrie, to bee endowed of the tenements holden by knights seruice in the kings Court, or in any other court, the gardeine in chiualry may pleade in such case al the matter, and shew how the wife is warden in socage as is aforesayde, and praye that it may bee adiudged by the court that the wife endow her selfe of ꝑ moste faire, called Plus beale, of the tenements that she hath as warden in socage, after the value of the thirde part that she claymeth to haue of the tenementes in chyualrie by her writte of dower, and if the wife may not gaine say it, then the iudgement shal be made, that the warden in chiualry shal hold the landes holden of hym duringe the nonage of the chylde quite from the woman &c. And that the woman may endow her selfe of the most faire part of the landes that shee hath as warden in socage to the value of the thirde

part

part that the warden in chiualry hath &c.
And after suche iudgement geuen, the wyfe 49
may take her neighbours, and in their presēce
endow her selfe by meetes and bounds of the
fairest part of the tenementes that shee hath,
as warden in socage, to the value of the third
part of the landes that the warden in chyual-
ry hath, and that to haue and holde for terme
of her life. And such dower is called dower of
the fairest part, or de pluis beale.
¶ With this agreeth .45. Ed.3.k.4. But
there it was sayd, that after the time that the
heire come to his full age, the wyfe shal haue
a new accion of dower against the heire, to be
endowed of the third part of all that the man
died seised. And note wel that such dowment 50
may not be, but where the iudgemēt is geuen
in ỹ kings court, or in some other court. And
the wife may do this for saluatiō of the estate
of the warden in chiualry duringe the nonage
of the child. And so ye may see fiue manner of 51
dowers, that is to say, dower by the commen
lawe, dower by custome, dower at the church
doore, dower of the fathers assent, and dower
of the most faire. And remember that in euery 52
case where a man taketh a wife seised of such
estate of tenementes &c. so that the issue that
he hath by hys wife may by possibilitie inhe-
rite the same tenementes of suche estate that
the wyfe hath, as heire to the wife: In such
case after the wyfe is dead, hee shall haue
the same tenementes by the curtesy of Eng-

land & otherwise not.

53. ¶ And also in euery case where the wife taketh an husband seysed of such estate of tenements &c. so that by possibilitie it may happe the wife to haue some issue by her husband, & that the same issue may by possibility inherite the same tenemẽts of such estate that the husband had as heire to his father: of such tenementes shee shall haue her dower, and otherwise not. For if the tenements be geuen vnto a mã & to his heires that he getteth on his wiues body, in such case the wife hath nought in the tenements, and the husband hath estate but as donee in special taile. Yet if ỹ husband die without issue, the same wife shalbe ẽdowed of the same tenements, for that the issue ỹ she by possibilitie might haue had by the same husband, may enherite the same tenementes. But if ỹ wife decease liuing ỹ husbãd, which after taketh an other wife, ỹ second wife shal not be endowed in this case. Causa qua supra.

54. ¶ A man was seised of certaine landes, and tooke wife, and after alyened the same landes wyth warrantie, and after the feoffour and feoffee dyed, and the wife of the feoffour bringeth an actyon of dower agaynst the issue of the feoffee, and hee vouched the heire of the feoffour, and during the voucher and not termined, the wife of the feoffee bryngeth an action of dower against the heire of the feoffee, and demaundeth the thirde parte of all that her husband was seysed, and wouldе not demaunde

maunde the third part of those two partes ꝑ her husband was seised, it was awarded ꝑ she should haue no iudgemēt vntill the time ꝑ the other plee were determined.

And also note that Vauisour sayth, that yf 55
a man be seysed of landes, and committeth fe-
lony, and abyeneth, and after is attaynted. the
wife shall haue good accion of dower agaynst
the feoffee. But if it be escheated vnto ꝑ king,
or vnto the lorde, shee shall haue no writte of
dower. And so see the diuersitie, and enquire
the cause.

¶ Tenant for terme of life.

TEnaunt for terme of life is, where a man 56
letteth lands or tenements to another for
terme of lyfe of the lessee, or for terme of lyfe
of an other man. In such case the lessee is te-
naunt for terme of life. But by common lan-
guage, hee that holdeth for terme of his owne
life, is called tenaunt for terme of lyfe, and hee
that holdeth for terme of another mans lyfe,
is called tenaunt for terme of another mans
life. And it is to be vnderstoode, that there is 57
feoffour and feoffee, donour, and donee, lessour
& lessee. The feoffour is properly where a man
enfeoffeth an other in anye landes or tene-
ments in fee simple, he that maketh the feof-
femēt is called feoffour, and he vnto whom ꝑ
feoffement is made, is called feoffee. And the
donour is properlye where a manne geeueth
certaine landes or tenementes to an other in

the taile, he that maketh the gift is called donour, and he to whom the gift is made is called donee. And lessour is properlye where a man letteth to an other certaine landes or tenementes for terme of life, for terme of yeres, or to hold at will, he that maketh the lease is called lessour, & he to whom the lease is made is called lessee, and euery one that hath estate in landes or tenements for terme of his owne life, or for terme of another mans life, is called tenaunt of freeholde. And none of lesse estate may haue freeholde, but they of greater estate may haue freeholde, for tenaunt in fee simple hath freeholde, and tenant in the taile hath also freeholde.

¶ Tenant for terme of yeres.

58. TEnant for terme of yeres is, where a man letteth lands or tenements to another for terme of certayne yeares after the number of yeres that is accorded betwene ỹ lessour and the lessee, and when the lessee entreth by force of ỹ lease, then is he tenant for terme of yeres, and if the lessour in such case reserue to him a yerely rent vpon such lease, hee may chose for to distraine for the rent in the tenements letten, or els hee may haue an accion of debte for the arrerages against the lessee. But in such case it behoueth that the lessour bee seysed in the same tenemẽts at the time of his lease, for it is

it is a good plee for the lessee to say, that ỹ lessour had nothing in the tenementes at ỹ time of the lease, except the lease bee made by deede indented, in which case then suche plee lyeth not for the lessee to plede.

59 ¶ And it is to be vnderstoode, ỹ in a lease for terme of yeares by deede or without deede, it nedeth no liuery of seisin to be made to the lessee, but he may enter whensoeuer hee will by force of the same lease. But of feffemẽts made in the countrey, or giftes in the taile, or leases for terme of life, in such cases where freeholde shall passe, if it be by deede or without deed, it behoueth to haue liuery of seisin &c. But yf 60 a man let lands or tenements by deede or without deede for terme of yeres, the remainder ouer to an other for terme of life or in the taile, or in fee, then in such case it behoueth that the lessor make liuery of seisin to ỹ lessee for terme of yeres, or els there shall nothinge passe to them in the remaynder, though the lessee enter in the tenementes. And if the termour in such case enter before any such liuery of seysin made vnto him, then is the freeholde and ỹ reuersion in the lessour. But if he make any liuery of seisin vnto the lessee, then is the freeholde with the fee to them in the remaynder after the forme of the graunt, and will of the lessour.

¶ And if a man will make a feoffement by 61 deede or wythout deede of landes or tenements that he hath in many Townes in one shere, if the liuery of seysin bee made in one parcel

parcell of the tenements in one towne in the name of all, it sufficieth for al the other landes or tenements comprehended in the same feoffement in all other townes in the same shire. But if a man make a deede of feoffement of landes or tenementes in diuers shires, there it behoueth him to haue in euery shire a liuery
62 of seisin. And in such case a man shal haue by the graunt of an other fee simple, fee tayle, or freehold, without liuery of seisin. And if .ij. mē be, and eche of them is seised of a quantitie of land within one shire, and the one graunteth his land to the other in exchange for that land that the other hath, & in the same manner the other graunteth his land vnto the first grātor in exchāge for the land ꝑ the first grātor hath. In this case eche may enter in ꝑ others lāds so taken in exchāge without any liuery of seisin. And such exchange made by wordes, of tenements within the same shire without any writ-
63 ting, is good inough. And if the landes or tenements be in diuers shires, that is to say, ꝑ that the one haue be in one shire, & ꝑ the other haue in an other shire, it behoueth to haue a deede indented made betweene them of suche exchange.

64 ¶ And note, that in exchange it behoueth ꝑ the estates that both parties haue in ꝑ lands so exchaūged, be equal. For if the one willeth & graunteth that the other shal haue his land in the tayle for ꝑ lād that he hath of the graūt of the other in fee simple, though the other agree to that, yet this exchange is but void, for

that

that the estates be not euen.

¶ In the same mãner it is where it is graũted and agreed betwene them, ỹ the one shall haue in the one land fee taile, & the other shal haue in the other land but terme of life: Or if one shal haue in the one lande fee taile general, and the other in the other land fee taile especial &c. So alway it behoueth ỹ in eschãge the estate of both parties bee euen, that is to saye, if the one haue fee simple in the one lãd, that the other shall haue suche estate in the other land, and if the one haue fee tayle in the one lande, then the other shall haue likewyse in the other lande. Et sic de alijs statibus. But it is nothinge to charge of the euen value of the landes, for though that the lande of the one is so muche more in value then the lande of the other, this is nothinge to purpose, so that the estates made by the exchaunge bee euen, and in exchaunge be two grauntees, for euerye partye grauncteth his lande to the other in exchaunge, and in eche of their graũtes mencyon shalbee made of the exchaũge. 65

¶ And if a man let land to another for terme of yeres, though, the lessour die before ỹ lessee enter into the tenements, yet may he enter into the tenements after the death of ỹ lessour, for that, that the lessee by force of ỹ lease hath right incontinent to haue the tenementes after the fourme of the lease. But if a man make a deede of feoffement vnto another, and a letter of attorney to a man to deliuer to him 66

seisin

seisin by force of the same deede, yet if the lyuery of seisin be not made in the lyfe of him that made the deede, it auaileth not, for that the other hath no maner of right to haue the tenementes after the purport of the deede before ꝑ liuery of seisin &c. And if no liuery be made then after ꝑ death of him that made the deede ꝑ right of such tenemẽts is incõtinẽtly in his heire or in some other. Also if tenementes bee let to a man for terme of halfe a yeare, or for terme of a quarter of a yere &c. In such case if the lessee make waste, the lessour shall haue against him a writ of waste, and the wryt shall say: Qui tenet ad terminum annorum, But hee shall haue a special declaration vpon the troth of this matter, and the plee shall not abate the writ for that that he may haue no other writ vpon the matter. An. 7. H. 7. fo. 1.

¶ Tenant at will.

65 TEnaant at will is, where landes or tenements be lettē by a man vnto another, To haue and to hold to him at the will of the lessour by force of which lease ꝑ lessee is in possession. In such case the lessee is called tenant at will, for that he hath no certeine sure estate, for the lessour may put him out at what time it pleaseth him, yet if the lessee sowe the lande, and the lessour (after the sowinge and before that hys graynes bee ripe) put hym out, yet shall the lessee haue his graines, and shal haue free egresse and regresse to reape and to carrie hys

his graines, for that he wist not at what time his lessour would enter vpon him. Otherwise it is if tenant for terme of yeres before the end of his terme soweth the lande, and the terme ende before that his graines be ripe. In this case the lessor, or he in the reuersion shall haue the graines: for that the fermour knewe well the certeine of his terme, and when his terme should be ended.

¶ Also if an house be let to a man to holde at will, by force of which the lessee entreth into the house, within which house he bringeth his houshold stuffe, and after the lessour putteth him out, yet shall hee haue free entre, egresse, and regresse in the same house by reasonable tyme to carye his goods and houshould stuffe. And if a man be seised of a house in fee simple, fee taile, or for terme of life, the which hath certeine goodes within the same house, and maketh his executors and deceaseth, whosoeuer after his death hath the house, yet shall his executors haue free entre, egresse, and regresse to cary out of the house the goodes of their testators by a reasonable time. 69

¶ Also if a man make a deede of feoffement vnto another of certaine lande, and deliuereth to him the dede, but no liuery of seisin. In this case he to whom the deede is made may enter into the lande, and holde and occupie it at the will of him that made the deede, for that, if it is proued by the wordes of the deede, that it is his will that the other shal haue the lād. But 70

he

he that made the deede, may put him out whē he will.

71 ¶ Also if an house be let to holde at will, the lessee is not holden to sustayne or repaire the house as tenant for terme of yeares is holden to do. But if the lessee at will make voluntarie waste, as in puttyng downe of houses, or in cutting or felling of trees: It is said that the lessour shal haue for that against him an action of trespas. As if I deliuer to a man my sheepe to dong or marle his land, or mine oxen to ayre his land, and he slayeth the beastes, I may well haue an actiō of trespas against him notwithstanding the deliuery.

72 ¶ Also if the lessour vpon such lease at will reserue vnto him a yerely rent, hee may distreine for the rent behinde, or haue for that an action of debt at his owne choice 11.6. R. 2. or a Replegin.

¶ Tenant by copy of court roule.

73 TEnant by copy of court roule is, as if a mā bee seysed of a māner within which manner there is a custome, and hath beene vsed in time out of minde, that certayne tenauntes within ỹ same maner haue vsed to haue lāds or tenementes, to holde to them and to their heires in fee simple, or in fee tayle, or for terme of life &c. at the will of the lorde, after the cus-
74 tome of the same manner, and such tenaunt may not alyen the lande by deede, for then the

the Lorde may enter as in a thing forfayt to him. But if he will alyen his land to another, him behoueth after some custome to surrender the tenementes in some court &c. into the Lordes handes to the vse of him that shall haue the estate, in such fourme, or to such effecte. Ad hanc curiam venit A. de B. et sursum reddidit in eadem curia, vnum messuagium &c. in manus domini ad vlum B. de A. & heredum suorum, vel heredum de corpore suo exeunt', vel pro termino vitę sue &c. Et super hoc venit prædictus E. de A. & cæpit de domino in eadem curia messuagium prædictum &c. habendum & tenedum sibi & heredibus suis, vel sibi & heredibus de corpore suo exeuntibus, vel sibi, ad terminum vite sue, ad voluntatem domini secundum consuetudinem manerij, faciend' & reddendo inde redditus, debit' seruitia, & consuetudines inde prius debita, et de iure consueta, & dat domino de fine &c. Et fæcit domino fidelitatem &c. That is to say, A. of B. commeth vnto this court, and surrendreth in the same court a messe &c. into the handes of the Lorde, to the vse of E. of A. and his heires, or to the heires issuinge of hys bodye, or for terme of lyfe &c. And vpon that commeth the forsaid E. of A. and taketh of the lord in the same court, the forsayde messe &c. To haue & to hold to him & to his heires, or to him & to the heires issuinge of his body, or to him for terme of lyfe, at the Lordes will after the custome of the manner to do & yelde there-

therefore rentes, dettes, seruices, and customes thereof before due and accustomed &c. and geueth the Lorde for a fine &c. and maketh vnto the Lorde his fealtie &c. And such tenants
75 bene called tenaunts by Coppe of court roule, for that they haue none other euydence concerninge theire tenementes but the coppes of
76 the court roules, and such tenauntes shall not implede, nor bee impleded for their tenementes by the kinges writte, but if they will implede other for their tenemẽts, they shal haue a plaint made in the court of the Lorde in such forme, or to such effect A. de B. queritur vers⁹ C. de D. de placito terre, videlicet de vno messuagio, quadraginta acris tre, quatuor acris parti &c. cum pertinentijs. Et facit protestationem sequi querelam istam in natura breuis domini Regis assise mortis antecessoris ad cõmunem legẽ, vel breuis domini Regis assise noue dyssei'ne ad communem legem.

That is to say, A. of B. complaineth against C. of D. of a plee of lande, that is to saye of a mes', and forty acres of land, fower acres of medowe &c. with the appurtenaunces, & maketh protestation to sue his playnt in nature of the kinges writ of assise of the death of his antecessour, at the common law, or by writ of our soueraigne lord the kinge of assise of Mouel dissetsin at the common lawe, or in nature of some other writ &c. pledges to prosecute F.
77 G. &c. And though ỹ some such tenants haue inheritance after the custome of the maner, yet they

they haue none estate but at the Lords will, & after the course of the common lawe, for it is saide, if the Lorde put them out, they haue no other remedy but to sue vnto the lord by petition. For if they had any other remedy they should not be said tenaunts at the lordes will after the custome of the manner, but the Lord will not breake the custome for it is reasonable in such cases. But Brian chiefe Justice sayeth, that his oppinion alwaies hath beene, and alwayes shalbee, if such a tenaunt by custome (paying his seruices) bee cast out by the lord, he shal haue an actiō of Trespas against him. H.21.E.4. And likewise was the oppinion of Danby chiefe Justice H.7.E.4. for he sayeth that the tenaunt by the custome is alwell inherite to haue the land after the custome, as well as hee that hath franktenement by the common lawe.

TEnauntes by the yarde be in such nature as tenauntes by copy of court roule. But the cause for which they bee called tenauntes by the rodde, or yarde is, for that when they wyll surrender their tenementes into the Lordes hande to the vse of an other, they shall haue a lytle yarde or rodde by the custome and vse, in their handes, which they shall deliuer vnto the stewarde or baylife, after the custome and vse of the manner. And he that shall haue the land, shall take the same lande in the court, and his taking shalbe entred in the rolle And the stewarde or the baylife, accordinge to

the custome, shall deliuer vnto him that taketh the lande, the same yard or another yard in the name of seisin. And for this cause they bee called tenauntes by the yarde. But they haue none other euydence but copie of the court roule.

70 ¶ And also in diuers lordshippes and manours there is such a custome if such a tenant that holdeth by the custome will alien hys landes or tenementes, hee may surrender hys landes vnto the Bailife, or to the Reeue, or to two sad men of the same lordshyp, to the vse of him that shall haue the land, to haue in fee simple, fee taile, or for terme of life &c. and all that shal bee presented at the next court. And then hee that shall haue the lande by copie of court roule, shall haue the same lande after the entent of the surrender. Also it is to weete, that in diuers lordships and diuers mãners, there be made diuers customes in such cases, as to take tenemẽts, & as to pleð, and as touching other thinges and customes to bee done, & al that that is not against reason, may well be admitted and allowed. And such tenaunts

71 that holde after the custome of a seignyory, or after ỹ custome of a mãner, though they haue estate of inheritaunce, after the custome of the lordshyp, or of the mãner, yet because they haue not any freehold by the courte of the Cõmon law, they be called tenauntes by base tenure.

72 ¶ And diuers diuersities there be betwene a tenant at will which is in by the leale of his

Iessour

lessour by the course of the common lawe, and tenant after the custome of the manner in the fourme aforesaid. For tenaunt at will after the custome may haue estate of inheritance as it is aforesaid at the Lordes will after the custome and vsage of the manner: But if a man haue lands or tenements which be not within such manner or lordship where such custome hath beene vsed in the fourme aforesayde, and will let such landes or tenementes to another, to haue and to holde to him and to his heires at the will of his lessour, these wordes, to the heires of the lessee bee voyde, for this is the cause, if the lessee die and his heire enter, the lessour shall haue a good action of trespas against him, but not so against the heire of the tenant by the custome in anye case &c. for that the custome of the manner in some case may helpe him to barre his Lorde in an action of trespas.

¶ Also tenant by the custome in some places ought to repaire and sustayne the houses and the other tenant at will ought not. 53

Also one by the custome shal do fealtie & the other not. And diuers other diuersities there be betwene them. 54

¶ Thus endeth the first booke.

Homage.

85 HOmage is yͤ moſt honorabl' ſeruice & moſt humble ſeruice of reuerence that a franktenant may do to his Lord. For whẽ the tenaunt ſhal make homage to his Lord, he ſhall diſcende, and hys head vncouered, and his Lorde ſhall ſit, and the tenaunt ſhal kneele before him on both his knees, and holde his handes iointly together betweene yͤ handes of his Lorde, and ſhal ſay thus. I become your man from this day forward of life and limme, & of earthly worſhip, & vnto you ſhal be true & faithful, & beare you faith for the tenements that I claime to hold of you, (ſauing the faith yͭ I owe vnto our ſoueraygne Lord the king.) And then the lorde ſo ſittinge ſhal kiſſe him.

86 ¶ But if an Abbot, or a Priour, or any other man of religion ſhal make homage vnto hys Lorde, hee ſhall not ſay, I become your man, for that he hath profeſſed himſelfe onely to bee Gods man. But he ſhall ſay thus, I do you homage, and vnto you ſhal be trew and faithfull, and beare you fayth for the tenementes that I clayme to holde of you. Sauing the fayth that I owe vnto our ſoueraigne Lorde the kinge.

87 ¶ Alſo if a woman ſole ſhall make homage vnto her Lorde, ſhee ſhall not ſaye, I become your woman, for that is not conuenient for a woman to ſay that ſhee ſhal become the woman to any but onely to her huſ-

band

Clergy. did homage in
the same manner as
every other person did
without omitting
this clause. "I am your
man;" though Littleton
(and he alone) makes a
difference between
their forms of homage
&c. &c. Prynne—1st
Part Parliamentary
Writs. p. 203.

band when she is wedded. But she shall saye I make vnto you homage, and to you shalbe true and faithful, & shal beare you faith for the tenementes that I holde of you, sauinge the faith that I owe to our soueraigne Lorde the King.

But if a man haue seuerall tenancies which he holdeth of seuerall Lordes, that is to saye, euery tenãcy by homage. Then when he maketh homage vnto one of his Lordes, he shall saye in the ende of his homage. Sauinge the fayth that I owe vnto the king and vnto my other Lordes. 89

¶ And note well that none make homage but such as haue estate in fee simple, or in fee tayle in his owne right, or in an other mans right. For it is a ground in the lawe, that hee ỹ hath estate but for terme of life, shall make none homage, nor take none homage. 90

No homage for a life interest only.

For if a woman haue landes or tenements in fee simple or in fee tatle, which she holdeth of her Lorde by homage, and taketh an husband and hath issue, then the husbande in the life of the wife shal make homage, for that hee hath title to haue the lande by the curtesye, yf he suruiue his wife. And also hee holdeth in ỹ right of his wyfe. But afore issue betweene them, the homage shalbee made in both theire names. But if the wife decease before homage made by the husbande in the wyues lyfe, and the husbande holdeth himselfe in as tenaunt by the curtesy, he shall make no homage vnto

his lord, for that hee hath then none estate but for terme of life, More shalbee said of homage in the tenure of homage auncestrel.

¶ Fealtie.

91 FEaltie is as muche to say as Fidelitas in latine, and when a franketenaunt shall make fealty vnto the Lorde, hee shal hold his right hand vppon a booke, and shall say thus. Heare you this my lord, that I vnto you shal be faithfull and true, and beare you faith for ỹ lands or tenements that I claime to holde of you, and truely to you shall do the customes & seruices ỹ I ought to do vnto you at termes assigned, as God me helpe & al his saintes, & then hee kissed the booke, But hee shall not kneele when he maketh his fealty, nor shal make such hũble reuerence as is aforesaid in

92 homage. And great diuersitie there is had betwene making of fealtie, and of homage. For homage may not be made but to the lord himselfe. But the steward of the Lordes court, or the bailife may take fealty for the Lorde.

93 ¶ Also tenaunt for terme of life shall make fealtie, & yet he shal make none homage, and diuers other diuersities there be betwene homage & fealty.

94 ¶ Also a man maye see a good note, Anno 15. E 3. where and how a man and hys wife made homage & fealtie in the common banke whyche is wrytten in suche fourme. Note that

that John Lewknor and Elizabeth his wife made homage vnto William Thorpe in this manner. The one & ỹ other held iointly their hands betwene the hands of Willi Thorpe, & the husband said in this wise, we vnto you make homage, and beare you faith for ỹ lands that wee holde of A. your conusour whiche hath graunted you our seruices in W. & en C: & the other townes &c. against al men (sauing the faith that wee owe vnto our soueraigne Lord the King, and to his heires, and to our other lordes) and the one and the other killed him. And after they made fealtie, and the one and the other held their handes together vpō a booke, and the husbande sayde the wordes, and both killed the booke, more shalbe saide of fealtie in the tenure of socage, and in the tenure of franke almoigne, and in the tenure of homage auncestrel.

¶ Escuage.

EScuage is called in latine Scutagium, that is to say seruice of shield. And such a tenāt that holdeth his lande by escuage, holdeth by knightes seruice. And also it is cōmonly sayd that some holde by a fee of knyghtes seruice, & some by the halfe fee of knightes seruice &c. And it is said ỹ when ỹ king maketh a voyage roial into Scotlād for to subdu ỹ Scots hee that holdeth by a fee of knightes seruice, behoueth to be with the king by xl. daies well and conuenably arrayed for the warre. And

likewise he that holdeth his land by the halfe of a fee by knightes seruice, ought to bee with the king by xx. dayes, And he that holdeth hys land by the fourth part of a fee by knightes seruice, him behoueth to be with the kinge by x. dayes. And so after the quantitie, hee that hath more, to do more, and he that hath lesse to
96 do lesse. But it appeareth by the plees & argumentes made in a good plee vppon a writ of Detinue of an obligation brought by one Henry Gray Ann 7. E. 3. that it nedeth not to him that holdeth by escuage to goe him selfe, if hee will finde an able person for the warre conuenable arrayed for the warre, to goe with the kynge, and that seemeth good reason. For it maye bee that hee that holdeth by such seruice is sicke, in such wise that he may not goe nor ride.

And also an Abbot or any other man of religion, or a woman sole that holdeth by suche seruice, ought not in such case to go in proper person. And Sir William Herle that time chiefe Iustice of the common place, sayde in the said plee, that Escuage shall not bee graunted but where the king himselfe goeth in proper person. And so it abode in iudgement of the same plee yt these xl. dayes shalbee accompted from the day of the muster of the kings hoste made by the commons & by the kings commaundement: Or els from the day that the king first entreth into Scotlande &c. therefore inquire of this matter.

97 ¶ And after such voyage into Scotland it

it is commonly sayd that by the aucthority of Parliament, the escuage shalbe set and put in certaine, that is to saye, a certayne somme of money how muche euery one that holdeth by a whole fee of knights seruice which was not in his owne proper person, nor none other for hym which the kyng, shall paye vnto the Lorde of whom hee holdeth his lande by escuage. As put case that it was ordeyned by auctheritie of parliament that euery one that holdeth by a whole fee by knightes seruice which was not with the king, shal pay to his Lord xl.s. Then he that holdeth by the halfe of a fee by knightes seruice, shall paye vnto his Lorde but xx. s. and so who more more: and who lesse lesse. And some tenaunts hold, 87
that if escuage runne by auctheritie of parliament to anye summe of money, that they shal paye but the halfe of that summe, and some but the fowerth part of that summe. But because the escuage that they shal pay is not certaine, for that it is at no certein what the parliament wil assesse the escuage, they holde by knights seruice. But otherwise it is of escuage certaine of which shalbee spoken of in the tenure of socage.

And if a man speake generally of Escu- 99
age, it shalbee vnderstoode by the common speache of Escuage not certayne, which is knightes seruice. And such escuage draweth vnto him homage, and homage draweth vnto hym fealtie, for fealtie is incident to euerie manner of seruice, but to the tenure of

frank-

frankalmoigne as it shalbe sayde hereafter in the tenure of frankalmoigne. So as hee that holdeth by escuage, holdeth by homage, fealtie, and escuage.

100 ¶ And it is to be vnderstoode, that when escuage is so sessed by authoritie of parliamẽt, euery Lorde of whom the lande is holden by escuage, shall haue the escuage so sessed by the parliament, because it is vnderstoode by the lawe that at the beginninge such tenements were geuen by the lords to holde by such services to defende their Lordes as well as the kinge, and to set in quiet & rest their Lordes
101 and the kinge of Scottes aforesaide. And for that such tenements came first of the Lordes, it is reason that they haue ỹ escuage of their tenauntes.

¶ And the Lordes in suche case maye distraine for the escuage so assessed, or they may haue the kynges writtes directed vnto the Shirifes of the shires to leuie suche escuage for them, as it appeareth by the Register fol. 88.

¶ But of suche tenauntes that holde of the king by escuage which were not with ỹ king in Scotland, the king him selfe shall haue the escuage.

102. ¶ Item in such case aforesayde, where the kinge maketh a voiage royal into Scotland, and the escuage is assessed by parliamt, if the Lorde distreine hys tenaunt that holdeth of him by seruice of a whole knightes fee, for the escuage so assessed &c. And the tenant pleadeth

and

and ſtill auerre that he was with the king in Scotlande &c. by xl. dayes. and the Lord will auerre the contrary, it is ſayde that it ſhalbee tried by the certification of ỹ Marſhall of the kings hoſt in writing vnder his ſeale whyche ſhalbe ſent to the Juſtices.

¶ Homage. fealtie, and eſcuage.

¶ Enure by homage, fealtie, & eſcuage, is to holde by knights ſeruice, & it draweth vnto it warde, mariage, and reliefe. For when ſuch a tenaunt dyeth, his heire male being within age of xxi. yeres, the lord ſhall haue the land holden of him vnto the age of the heire of xxi. yerez, which is called plain or ful age, for that ſuch an heire by the vnderſtanding of ỹ lawe, is not able to do knights ſeruice before ỹ age of xxi. yere. 103

¶ And alſo if ſuch an heire bee not maried at the tyme of the death of hys auncеſter, then the Lorde ſhall haue the warde and mariage of him. But if ſuche a tenaunt dye, his heire female beeinge of the age of ſowerteene yere or more, then the lorde ſhal not haue ỹ warde neyther of the lande nor of the bodie, for that a woman of ſuch age may haue an huſbande able to do knightes ſeruice. But if ſuche an heire female be within the age of ſowerteene yere and not maryed at the tyme of the death of her auncеſter, then the Lorde ſhal haue the warde

warde of the lande holden of hym, tyll the age of ſuche an heire female of 16. yeres. For that it is geuen by the ſtatute of Weſt. 1. capitul. 12. that by two yeres next followynge the ſayde 14. yeres, the Lorde maye tender a conuenient mariage wout diſperagynge of ſuche an heire female. And if the lord do not tender her ſuch maryage within the ſaid two yeares, then ſhe at the ende of the ſayde two yeare may enter and put out the lorde. But if ſuch an heire female be maried within the age of 14. yeres in the life of the auncelter, and the auncelter die, ſhe being within the age of 14. yeare, the lorde ſhal haue but the ward of the lande til an end of 14. yere of age of ſuch an heire female. And then her huſband and ſhee may enter into the lande and put out the Lorde, for this is out of the caſe of the ſtatute, In ſo much & the lord cannot tender mariage to her that is maryed &c. For beefore the ſaide eſtatute of Weſtm 1. ſuche iſſue female that was within age of 14. yeare at the time of the death of her auncelter, and after that ſhee had accomplyſhed the age of fowerteene yeare wythoute anye tender of maryage to her by the Lorde, ſuche an heire female then myghte enter into the lande and put out the Lorde as it appeareth by the rehearſall, and by the wordes of the ſame eſtatute. So that the ſaid ſtatute was made in ſuche caſe all for the aduauntage of the Lorde as it ſeemeth. But yet that at all tymes it is vnderſtode by the wordes of the

ſame

ſame eſtatute, that the Lorde ſhall not haue the two yere after the xiiij. yere as it is afore=ſayde.

¶ And note well that the full age of the 104
male and female after the common ſpeache, is ſayd the age of xxi. And the age of diſcretyon is ſayed the age of xiiij. yeares, for a chilce at ſuch age which is wedded within ſuch age to a woman, may agree to the mariage or diſ=agree.

¶ And if the wardeine in chiualrie marie 105
once his ward within the age of xiiij. yeare, & after the age of xiiij. yeres he diſagreeth to the mariage. It is ſayed by ſome folke that the childe is not holden by the lawe to bee mary=ed another time by his wardeyne, for that the wardeine had once the maryage of him, and therefore he was out of his ward as con=cerninge the ward of his body. And when hee had once the mariage of him, and therefore was out of his ward, he ſhal no more haue the mariage of hym. In the ſame manner it is if 106
the wardeine marie him and the wife die the childe being within age of xiiij. yeares, or xxj. yeares. And that the chylde may diſagree to 107
ſuch mariage whē he cōmeth to thage of xiiij. yere it is proued by the wordes of the ſtatute of Merton cap. 6. that ſayeth thus. De domi=nis qui maritauerint illos quos habent in cuſto=dia ſua villanis, & aliis ſicut burgenſis vbi diſpa=ragent, ſi tales homines fuerint infra 14. annos, & talis ætatis quod matrimonio conſentire non poſſint,

poſſint, tunc ſi parentes illius conquerant, dominus ille amittat cuſtodiam illam vſque ad etatem heredis. Et omne commodum quod inde receptum fuerit cõuertatur in commodum heredis infra etatem exiſtentis ſecundum diſpoſitionem parentum, propter dedecus ei impoſitũ. Si autem fuerit 14. annorũ, et vltra quod conſentire poterit, & tali maritagio conſenſerit, nulla ſequatur pena. And ſo it is prouued by the ſame ſtatute that no diſperagement ſhalbee, but where that hee that hath the warde maryeth him wythin the age of xiiij. yere.

105 ¶ Alſo it hath bene a queſtion howe theſe wordes ſhoulde bee vnderſtande. Si parentes conquerantur &c. And it ſeemeth vnto ſome that conſidering the ſtatute of Magna charta Cap. 6. that willeth that heredes maritentur abſque diſparagatione &c. vpon which this ſayde ſtatute of Merton vpon this point is grounded as it ſeemeth, and in ſo much that it was neuer ſene that any action was brought vpon the ſtatute of Merton for ſuch diſperagynge againſt the wardeine, and if any action may bee taken vpon ſuch matter, it ſhalbe taken by common preſumption before thys time, or at ſome time to be put in vre, that theſe wordes ſhalbe vnderſtode in ſuch manner. Si parentes conquerantur ſi. Si parentes inter ſe lamentantur. which is as much to ſaye that yf the cofins of ſuch a childe haue cauſe to make lamentation and complaint amonge them for the ſhame done to their cofin ſo diſperaged

Which

which is in a maner a shame to them al, then may the next cosin to whom the heritage may not discend, enter and put out the wardeine in chyualry. And if hee will not, another cosin of the childes may do it, & hee to take the issues and profites vnto the vse of the childe, and of that yeld the childe accompt when hee commeth vnto his full age. Or els the childe him age may enter himselfe & put out the wardeine &c. sed quære de hoc.

¶ Also there ar many other diuers disperaginges, which be not specified in the same estatute. As if the heire that is in ward be maried vnto one that hath but one foote, or one hande, or els deformed, or lame, or haunge an horrible disease, or els a great and continuall infirmitie, or if the heire male bee maried to a woman passed childe bearing. And many other causes of disperaging there bee, but inquire for them, for it is good matter to learne. And of heires males that bee within age of xxi. yere after the death of their auncestors vnmaried, In such case the lord shall haue the maryage of such an heire, and haue space and tyme to tender to him conuenable maryage without disperaging within the same time of xxj. yere. 109 110

¶ And it is to witte, that the heire in such case may choose yf hee will bee maryed or no. But yf the Lorde which is called wardeyne in Chiualrye tender a conuenable maryage to such an heire within

in the age of xxj. yeare without disperagynge, and the heire refuse, and marrie not him selfe within the same age. Then the said Wardein shall haue the value of the marriage of such an heire, But if such an heire male mary hym selfe within the age of xxi. yeares, against the will of the Wardeine in chiualrye: Then shall the warden haue double the value of the mariage by the force of the estatut of Merton aforesaide, as in the same statute is more fullye compyled.

111 And diuers tenants hold of their Lordes by knightes seruice, and yet they hold not by escuage, nor pay no escuage as they that holde their landes by castelwarde, that is to say, to keepe a tower of a castle, or a gayle, or some other place by reasonable warninge, when their lordes heare tel that enemies wil come, or bee come into England. And in many other cases a man may hold by knightes seruice, and yet he holdeth not by escuage, nor paieth no escuage as shalbee saydein the tenure of Graunde serieantie. But in al cases where a man holdeth by knightes seruice, such seruices drawe to the Lord. ward, and mariage.

112 And if a tenant that holdeth of his lord by seruice of an whole knightes fee die, his heire being of ful age of xxi. yere, his heire shal pay vnto his lorde C.s. for a relefe, & he that holdeth by the halfe fee, shal pay l.s.

Also if a man holde his lande of his lorde
113 by the seruice of two knightes fees, then the heire

heire at ful age at the time of the deathe of his aunceſter, ſhall pay to his lord ten pound for reliefe.

¶ Alſo if there be graundfather, mother, & ſonne, and the mother dyeth lyuing the father of the ſonne, and after the graundfather which held his land by knightes ſeruice dyeth ſeiſed, and the land deſcendeth to the ſonne of yͤ mother, as heire to the graundefather which is within age. In ſuch caſe the lord ſhal haue the ward of the land, but not the warde of yͤ heire, For that none ſhalbe in warde of his body lyuing his father, becauſe the father duringe his lyfe, ſhal haue the mariage of his heire apparant, & not the Lord. Otherwiſe it is if yͤ father bee dead liuing the mother, where yͤ lande holden in chiualry, deſcendeth to the ſonne on the fathers ſide &c. 114

¶ Alſo if a man be ſeyſed of land which is holden by knightes ſeruice, & maketh a feoffement in fee to his vſe, and died ſeiſed of yͤ vſe hys heire within age, & no will by him declared, the Lorde ſhal haue a writte of ryght, of the body and the lande, like as if the tenāt had died ſeiſed of the demeſne. And if the heire bee of full age at the death of his aunceſter, in ſuch a caſe hee ſhal paye reliefe like as if hee had bene ſeyſed of the demeſne, and that is by the ſtatute of An.4.H.7.cap.17. 115

this Statute is repealed by the stat of 27 H 8 whereby all uses are transferred into possession

¶ Alſo there is a wardē in right in chiualry, & a wardē in dede in chiualry. Wardē in right in chiualry, is where the Lord becauſe of hys 116

lordship is seised of the ward of the land. & the heire vt supra, Wardein in deede in chyualrye is where the Lorde in such case after his seisin graunteth by deede or without deede the ward of the land or of the heire, or of both, to another man, by force of which graunt the graunteee is in possession, then is the graunteee called Wardein in deede &c.

¶ Tenure in socage.

117. ¶ Tenure in socage, is where the tenaunt holdeth of hys Lorde his tenaunty by certeine seruice for all māner of seruice, so that the seruice be not knightes seruice. As where a man holdeth his lande of his Lord by fealtye and certeyne rent for all manner of seruyce, or els where a man holdeth his lande by homage, fealtie, and certeine rent, for all manner of seruices, for homage by yt selfe maketh not knights seruice.

118. Also a man may hold of his Lord onely by fealty, and such tenure is tenure in socage. for euerie tenure that is not tenure in chyualry, is tenure in socage. And it is saide that the cause wherefore such tenure is sayde and hath the name of tenure in socage, is thus. Quia hoc socag. idē est, quod seruic' soce. Et hęc soca soce idem est qd' caruca s. one sok or one plough land. And in old time before ỹ limitatiō of time in mynd, great

119.

great part of the tenauntes that helde of their Lordes by ſocage, ought to come ſoyth their ploſwes euerie of the ſaid tenaunts by certeine dayes in the yere, to eare and lowe the Lordes landes of his owne graunes. But for that ſuch ſworkes were done for the ſyuelode and ſuſtenaunce of their Lordes, they were acquyted againſt their Lorde of all manner of ſeruices. And for this that ſuch ſeruice was done with their ploſwes, ſuch tenure was called tenure in Socage. And after ſ ſuch ſeruices were chaunged in diuers other manner ſeruices by conſent of the tenaunts, and by the deſire of their lordes, that is to ſay, into a yerely rent &c. But yet the name of Socage abydeth, and in dyuers places tenauntes yet do ſuch ſeruice with their ploſwes vnto their Lorde, ſo that al manner of ſeruyces that bee not tenures by knightes ſeruice bee called tenures in Socage.

¶ Alſo if a man hold of his Lord by eſcuage 120
certaine. That is to ſay in ſuch fourme, that when eſcuage renneth and is aſſeſſed by the Parliamēt to a more ſūme or to a leſſe ſūme, that the tenaunt ſhall pay to the Lorde but halfe a marke for eſcuage, and neyther more ne leſſe, to how great ſumme or lytle ſumme ſ the eſcuage runneth in this caſe, becauſe the eſcuage is in certeine before that any eſcuage is aſſeſſed &c. Such tenure is tenure in Socage and not knightes ſeruice. But where the

summe that the tenant shal pay for escuage, is not certeine, that is to say, where it may bee that the summe that the tenaunt shall pay for escuage may bee at one time more and another time, after that it is assessed &c. the such tenure is tenure by knights service.

121 ¶ Also if a man hold his land for to pay certeine rent to his lorde for castle ward, such tenure is tenure in socage. But where the tenant himselfe ought by him or by any other to make castleward, such is tenure by knightes service.

122 ¶ Also in al cases where the tenant holdeth of his lord to pay to him any certeine rēt, that rent is cal'ed rem service.

123 ¶ Also in such tenures in socage if the tenant haue issue and die, his issue beinge within the age of 14. yeares, then the next frend of ỹ heire to whom the herytage may not discende shal haue the warde of the lande, and of the heire vnto the age of the heire of 14. yeres, and such wardeine is called wardeine in Socage. For if land discend to the heire by the fathers side, then the mother, or some other nygh cosin of the mother syde shall haue the warde. And if land discend to the heire by the mothers side then the father or the nert freind of the fathers side shall haue the ward of such landes or tenements. And when the heire commeth to the age of 14. yeres complete, hee may enter & put out his wardeide in Socage, and occupie the land him selfe if he will. And such wardein in

socage

socage shall take no issues or profites of suche lands or tenements to his owne vse, but only to the vse and profite of the heire, and of that shall yelde accompt when it pleaseth the heire after that the heire hath accomplished the age of fowrteene yeres. But such a warden vpon suche accompt shall haue allowaunce of al his reasonable costes and expences of all things. And if suche a warden mary the heire within age of fowrteene yere, he shall make accompt to the heire or to hys executours of the value of the mariage, though hee tooke nothinge for the value of the mariage, for that it shall be erected his owne folly, that he woulde marye him without takinge the value of the mariage, wythout hee marye him to suche a maryage that is worth in value as muche as the mariage of the heire &c. Also if anye other man that is not a nygh friend &c. occupy the landes and tenementes of the heire as warden in socage, hee shalbee compelled to yelde accompte vnto the heire, as well as his nexte friende. For it is no plee for hym in a writte of accompt to saye that hee is not hys nygh friend &c. But hee shall answere whether hee occupyeth the landes or tenementes as warden in socage or not. But inquire if after that the heire haue accomplished the age of fowrteene yere, and the warden in socage continually occupyeth the lande till the heire commeth to full age of xxi. yeres: If the heire at hys full age shall haue an accion of accompt agaynst the wardein for the time that he hath occupy-

124.

to after the said fowerteene yeres, as against his wardein in socage, or agaynst hym as against his bailife.

125 Also if wardeine in chiualrye make hys executours, and dye, the heire beinge within age &c. The executours shall haue the warde, during the nonage. But yf the wardein in Socage make executours and dye, the heire beinge within the age of fowerteene yeares, hys executours shall not haue the warde, but an other nygh frende to whom the herytage may not discende, shall haue the warde. And the cause of diuersitie is, for that the wardein in chiualry hath the warde to his proper vse, & the warden in Socage hath not the warde to his owne vse, but to the vse of the heire. And in such case, where ỳ wardein in socage dyeth before any such accompt made by him, the heire is of that without remedye, for that no writ of accompt lyeth against ỳ executors but onely for the king.

126 Also the lorde of whom the lande is holden in Socage after the death of hys tenaunt, shall haue reliefe in suche fourme. If the tenaunt holde by fealtye, and certaine rent to paye yearely &c. If the termes of payment bee to pay by two termes of the yeare, or by fower termes of the yeare, the Lorde shall haue of the heire of hys tenaunt, as much as the rent amounteth that hee shoulde paye by yeare. As if the tenaunt holde of the

Lorde

Lord by fealtie, and x. shillinges of rent, paiable at certaine termes of the yere, then ỹ heire shal pay to the lord. x. s. for reliefe aboue these x. s. that hee shal pay for the rent. Looke more in the statute of Anñ 19. henrye the seuenth Cap. 15.

And in suche case after the death of the te- 127
naunt, suche relefe is due to the lorde incontinent of what age soeuer the heire bee, for that suche a Lorde may not haue the warde of the body nor the lande of the heire. And the Lord in such case ought not to abyde the payement of his relefe after the termes and dayes of payment of the rent, but he ought to haue his relefe incontinent. And therefore hee may incontinent distreine after the death of his te- 128
naunt for the relefe. In the same maner it is, where a tenaunt holdeth of his Lord by fealtie, and by a pound of Cummin, or a pound of Pepper by the yere, & the tenant die, the lorde shall haue for his relefe a pound of Cummin or a pound of Pepper.

In the same manner is it where the te- 129
naunt holdeth to pay by yeare a certein number of Capons, or hẽnes, or a paire of gloues, or certeine bushels of wheate, and suche other manner thinge. But in some case the Lorde ought to abyde to distraine for his relefe til a certaine time.

As if the tenant holde of his Lord by a rose or by a bushell of roses to pay at the feast of S. Johañ Baptist. If suche a tenaunt dye in Winter, then the Lorde may not distraine for

his relefe &c. vntill the time that the roses by
the course of the yere maye haue their growe=
130 ynges &c. Et sic de similibus. Also yf any perad=
uenture will aske why a man may not holde
of his lorde by fealty onely for al maner of ser=
uices, in so much ꝑ when the tenāt shal make
his fealty, he shall swere to his lorde that hee
shall doe all seruyces due, and when he hath
made fealtie in suche case, there is none other
seruice due. To this it may be saide, ꝑ where
the tenant holdeth his land of his lorde, it bee=
houeth that hee ought to do to his lorde some
manner of seruice, for if the tenaunt nor hys
heires ought to do no maner of seruice to his
lorde nor to his heire, then by long time conty=
nued it shoulde bee out of remēbrance of whō
the land was holden, of the lorde or of his heire
or not, and then more oft and more sooner will
men say that the land is not holdē of the lorde
nor of his heires, then otherwise: and vppon
this the lorde shal lose his eschete of the lande,
or percase other forfaiture or profite that hee
might haue of the land. So it is reason that ꝑ
lorde & his heires haue some seruice done vn=
to hym for a proofe and a witnes that the land
131 is holden of them, & therefore fealtie is incident
to al maner tenures, except tenure in frankal=
moigne as shalbe said in frankalmoigne, & be=
cause that the lorde will not at ꝑ beginning of
the tenure haue any other seruices but fealty,
it is reason that a man may holde of his lorde
onely by fealty, and when hee hath made his
fealty, he hath done al his seruice.

¶ Also

¶ Also if a man let to an other for terme of 132
lyfe certayne landes or tenementes without
speakinge of any thinge to yeld to the lessors,
yet he shall do to the lessour fealtie, for that
he holdeth of hym. Also if a lease bee made to
a man for terme of yeres, it is said ỹ lessee shal
do to the lessor fealty, for ỹ he holdeth of him,
And this is proued well by the wordes in a
writ of waste when the lessour hath cause to
bring a writ of wast against hym, the whych
writ shall say that the lessee holdeth the tene-
ments of the lessour for terme of yeres. So ỹ
writ proueth a tenure betweene the &c. but hee
that is tenaunt at will after the course of the
cōmon law, shal not make fealtye, because hee
hath no maner of a lure estate. But other wise
it is of tenant after the custome of the maner,
because that he is bound to do fealty to his lord
for two causes, one is because of custome, the
other is because ỹ he taketh his estate in such
fourme to do fealtie.

¶ Franke almoigne.

TEnaunt in franke almoigne is, where an 133
Abbot or priour, or an other man of religiō,
or of holy church, holdeth of his lord in frāke
almoigne, that is to say, in latin, In liberam ele-
mosinam, that is to say, in free almes.

And suche tenure began first in olde tyme,
when a man in olde time was seised of lands
or tenementes in his demesne, as of fee, and

of the

of the same lande enfeoffed an Abbot and hys
couent, or priour and hys couent, to haue and
to holde of them and their successours in pure
and perpetual almes, or in frankealmoygne,
or by such wordes, to holde of the grauntour,
or of the feffour and his heires in free almes;
In such case the tenementes were holden in
134 frankalmoigne, and in the same manner it is
where the landes or tenements were graun-
ted in olde time to a Deane and Chapter and
to their successours, or to a person of a church,
& to his successors, or to any other man of ho-
ly church & to his successours in free almes, if
he had capacitie to take such grauntes or feof-
135 fements &c. and such as holde in free almes, bee
bound of right afore God to do orisons, praie-
ers, & masses, & other deuine seruices for the
soules of the grauntours or feoffours, or for ȳ
soules of their heires whiche bee dead, and for
the prosperitie and good lyfe of them that bee
a liue.

¶ And for this, they do at no tyme no man-
ner of fealtie vnto their lords, for that such di-
uine seruice is better for thē before God, then
any doinge of fealtie, and also these wordes
free almes, or franke almoigne, exclude the
lorde to haue any worldly or temporal seruice
but onely to haue deuine and spyrytuall seruice
136 to bee done for him &c. And if such that holde
their tenementes in free almes, or franke al-
moygne woyll not, or kayle to doe suche dy-
uine seruice as is saide, the Lorde maye not
distraine them for the seruices vndone &c. be-
cause

cause it is not set in certayne, what seruice they ought to doe: but the Lord may of them complayne to their Ordinarye, prayinge hym that hee will serre punishment and correction of that. And also to prouide and see that such negligence be no more done. and the ordinarye of right ought to do that &c.

¶ But where an Abbot or a prior holdeth of his lorde by certeine deuine seruice in certeine to bee done, as for to singe a masse euery fryday in the weeke, for the soules &c. or euerye yeare at such a day to singe Placebo & Dirige &c. or to finde a chaplein to sing masse &c. or to distribute in almes to an hundred poore men an hundred pence at such a day, in such case if such deuine seruice bee not done the lord may distreine &c. for that this deuine seruice is in certeine by their tenure what the abbot or the priour ought to do. And in such case the lorde shal haue the fealty &c. as it seemeth. 137

And such tenure is not sayde tenure in free almes, but it is saide tenure by deuyne seruice, for in tenure in free almes, or franke almoigne, no mencyon is made of any manner certeine seruice, for none may holde in free almes or franke almoigne if there bee expressed any manner certeyne seruice that he ought to do.

¶ And if it be demaunded if the tenaunt in frankmariage shall doe fealty to the donour or to his heires before the fowerth degree be passed &c. It seemeth that yea, for he is not 138

lyke

lyke as to thys intent to a tenaunt in free almes or franke almoigne for that the tenant in free almes shall do (because of his tenure) deuine seruice for the lord as it is aforesaide, and that hee is charged to doo by the lawe of holy Church, and for that hee is excused and discharged of fealtie. But tenant in franke mariage doth not by his tenure such seruice.

And if he do not to his lorde fealtie, then he doth not to his Lorde any manner of seruyce neither spirituall nor temporall, which should bee an inconuenience and agaynst reason, that a man should haue estate of inheritance of an other, and yet the lorde shall haue no maner of seruice of him as it seemeth, and so it seemeth that hee shal do fealty to his Lorde until the foweerth degree be past &c. And when he hath
139 done fealty, hee hath done all his seruice. And if an Abbot holde of his lorde in free almes, & the Abbot and his couent vnder their cõmon seale alien the same land to a seculer mã in fee simple, in this case the seculer man shall doe fealtie to the lorde for that hee may not holde of his lorde in free almes, for if ỹ lord ought not to haue of him fealtie, then hee shall haue of him no maner of seruice which should bee an inconuenience where hee is Lorde, and the tenemẽts are holden of him.

140 Also if a mã grant at this day to an abbot or to a priour, landes or tenements in free almes or franke almoygne, these wordes free almes or franke almoigne bee boyde, for that it is

it is ordeyned by the statute which is called Quia emptores terrarum, which statute was made Anno 18. Regis E. primi. That no man may alyen or graunt landes or tenementes in fee simple to hold of him selfe, so ỹ if a man be seised of certeyne land or tenements which he holdeth of his lorde by knightes seruice & at this day hee graunteth the same land to an Abbot &c. in free almes or franke almoigne, ỹ Abbot shall holde immediatly the same tenementes by knightes seruice of the Lord of his grauntour, because of the same statut: so that no man may holde in free almes or in franke almoigne, but if it bee by title of prescription, or by force of a graũt made to some of his predeccessours before the same statute. But the king may geeue landes or tenementes in fee simple to hold in free almes or frãk almoigne, or by other seruice, for hee is out of the case of the statute, and note well that no man may 141
hold lands or tenementes in free almes, but of the grauntour or his heires. and that for the vtilitie of the gifte, and therefore it is sayde that if there be lord mesne and tenaunt, & ỹ tenaunt is an Abbot that holdeth of his mesne in franke almoigne, if the mesne die without heire, then the mesnaltie shall come by eschete to the said Lord above, & the abbot then shall hold of him immediatly only by fealtye, & shall do him fealtie, for that he may not hold of him in franke almoigne &c.

And note well, where that such a man of 142
reli-

religion holdeth his lands of his Lord in free almes &c. his lorde is bound by the law to acquite him of euery manner of seruice that any lord aboue him will demaund or aske of the same tenaunts. And if he acquite him not but suffer him to be distrained &c. then hee shall haue against his lorde a writte of meins, and recouer his dãmages & costs of his suit.

¶ Homage auncestrel.

143 TEnure by homage auncestrell is, where a tenant holdeth his land of his lord by homage, and the same tenant and his auncesters whose heire hee is, haue holde the same lande of the said lorde and of his auncesters, whose heire the lord is, from time out of mind by homage, & haue dõe homage vnto him which is called homage auncestrell because of the continuaunce which hath been by title of prescription in the tenancy, in the blood of the tenant, & also in the lordship in the blood of the Lord. And such seruice by homage auncestrell draweth to yt warrantie, if the Lorde that is at time hath receyued homage of such tenaunt, he ought to warrant his tenant when hee is impleded of the landes holden of him by homage
144 auncestrel. And also such seruyce by homage auncestrell draweth to yt acquitaunce, that is to saye, the Lorde ought to acquyte his tenaunt against al other lordes aboue him of e-
145 uerie manner of seruice. And it is saide that if such tenaunt bee impleded by a Præcipe quod reddat

reddat &c. and hee voucheth his Lord to warranty, which cõmeth in by processe, and asketh of the tenaunt what hee hath to binde him to warranty, and hee sheweth how hee and hys auncesters whose heire hee is, haue holden the lande of the voychee and of his auncesters, whose heire he is, by homage from time out of mynd: if the lord which is vouched receaueth none homage of the tenant, nor of any of hys auncesters, the lord then if hee will, may disclayme in the lordship, and so put out his tenaunt of his warranty. But if the lord which is vouched hath receiued homage of the tenãt or of any of his auncesters, then may hee not disclaime, but he is bound by the law to warrant the tenaunt, and then if the tenaunt leese the lande in defaut of the vouchee, he shall recouer in value against the vouche eof the lãds or tenements that the vouchee had at the time of the voucher or any time after. And it is to 146
weete that in euery case where the Lord may disclaime in his Lordship by the law, in court of Record, and of that will disclaime, his seigniourie is extinct, and the tenaunt shall holde of his Lorde next aboue the Lorde which so disclaimeth. But if an Abbot or Priour bee vouched by force of hõage auncestrel &c. though hee haue neuer taken homage &c. yet hee cannot disclaime in this case nor in nõe other case, for they cannot deuest that thing in fee which hath bene vested in their house. Pasche 10. E. quarti

Also

147 ¶ Also if a mā that holdeth his land by homage auncestrel alieneth his land to an other in fee, the alienee shall do homage to his lord. But he holdeth not of his Lorde by homage auncestrel for that the tenaunce was not continued in the bloud of the auncestours of the alienee, nor the alienee shal neuer haue the warrātie of his land of his Lord, for that the continuance of the tenaunce in the tenaunt and in his bloude by the alienation is discontinued, so see that the tenaunt that holdeth his lande by homage auncestrel of the Lorde, and such a tenaunt alieneth in fee, though that he take estate of the alyence againe in fee, hee holdeth the land by homage, but not by homage auncestrell.

148 ¶ Also it is said, that if a man hold his lād of his lord by homage and fealtie, and he hath made homage and fealty vnto his lord, and the lord hath issue a sonne, and dieth, and the lordship discēdeth to his sōne. In this case the tenaunt which ded homage to the father, shall not do homage to the sonne, for that when a tenaunt hath made once homage to his lorde, he is excused for terme of his life to make homage to any other heire of the lorde. But yet he shall do fealtie to the sonne and heire of his Lorde, though that hee made fealtie to his father.

149 ¶ Also if the lord after the homage to him made by his tenaunt, graunt the seruice of his tenaunt by deede vnto another in fee, and the

tenaunt

tenant attorneth &c. the tenaunt shall not bee compelled to do homage but he shall do fealtie though he did fealty before to the graunter, for fealtie is incident to euerie attournemēt when the lordship is graunted. But if a man be seysed of a manour, and another man holdeth his land of him as of the manour aforesaid by homage, the which hath done homage to his lord which is seised of the manour, if after that a straūger bringe a Præcipe qnod reddat agaynst the lord of the manour and recouereth the manour against him and sueth execution &c. in this case the tenant shall once agayne do homage to him that recouereth the manour, for that the state of him which receyued homage before is defeated by the recouery. And it shall not lie in the mouth of the tenant to falsifye or defeate the recouery which was against hys Lord, & so see the diuersitie in this case where a man cōmeth to his lordship by recouery, and where he commeth by discent or graunt of the seigniory.

¶ And if a man tenaunt which ought by hys 150
tenure to do homage to his Lord come to his lord and say to him, Sir, I owe to do vnto you homage for the tenements that I hold of you and I am redy to do you homage for the same tenements for the which I pray you that yee will now receiue it, and if the lorde then refuse 151
to receiue it, then after such refusall the Lorde may not distraine the tenaunt for the homage before that the Lord require the tenant to do

homage, and the tenant refuse to do it.

152 ¶ Also a man may hold his land by homage auncestrel, & by escuage, or by other knightes seruice, as wel as he might hold his land by homage auncestrel in Socage.

¶ Graund sergeantie.

153. TEnure by graund sergeantie is, where a man holdeth his lands or tenements of our soueraigne lord the king, by the seruice which he ought to do in his owne proper person, as to beare the kinges banner or his speare, or to lead his host, or to bee his marshal, or to beare his sword before him at his coronation, or to be his sewer at his coronation, or his keruer, or butler, or to bee one of his Chamberleynes of his restem of his Eschequer, or to do such seruices &c. and the cause wherefore such seruice is called graund sergeantie, is for that it is more honorable, & worshipful, & digne. then is ꝑ seruice of ꝑ tenure by escuage, for he that holdeth by escuage, is not limitted by his tenure to do any more especial seruice then any other ꝑ holdeth by escuage ought to do. But he ꝑ holdeth by Graunde sergeantie, ought to do some especial seruice to ꝑ king. that he that holdeth by escuage ought not to do.

154 ¶ Also if the tenaunt which holdeth by escuage die, his heire beeyng of full age, if hee holde by a knyghtes fee, the heire shall paye but an C.s. for his relicte. as it is ordeined by the statute of Mag. chart cap. 2. but he ꝑ holdeth

deth of the kinge by graunde ſergeauntie and dyeth his heire beinge of ful age, ſhal pay vn-
to the kinge for his relieſe, the value of his
lands or tenements by the yere, beſide ỹ charges and reprizes which he holdeth of the king
by graund ſergeantie. And it is to weete, that
ſerieauntie in latin is ſeruicium, and of magna ſeriantia is magnum ſeruitium, that is to ſay, a
great ſeruice.

¶ Alſo thoſe which holde by eſcuage ought 155
to do their ſeruice out of the realme, but they
that holde by graunde ſergeantie for the moſt
part ought to doe their ſeruice within the
realme.

¶ Alſo it is ſaid ỹ in the Marches of Scot- 156
land ſome holde of the king by cornage, that is
to ſay, to blowe an horne for to warne the men
of the cõtrey &c. when they heare ỹ ỹ Scots
or other enemies will come or enter into Eng-
land &c. Which ſeruice is graunde ſergeauntie
&c. but if anie tenaunt hold of any other Lord
thẽ of the king by ſuch ſeruice of cornage, that
is not graund ſergeantie, but it is knights ſer
uice, and draweth to yt ward, mariage, & re-
lieſe, for none may hold by graunde ſergeantie,
but of the king only.

¶ Alſo a man may ſee in the xj. yere of Henry 157
the foweꝛth that Cokein then beeinge chiefe
baron of Theſchequer came into the common
place bringing with him a copie of a recorde in
in theſe woꝛdes. Talis tenet tantam terram
de domino Rege per Seriantiam ad inueniendum

vnum hominem ad guerram infra quatuor maris &c. That is to ſaye, ſuch a man holdeth ſo much land of our ſouereigne Lord the king by ſergeanty to finde one man appointed for the warre within the fower ſeas, & he demaunded whether it was graund ſergeantie or pety ſergeantie. & Hank then ſaid that it was graunde ſergeanty, for that is was ſeruice to be done by the body of a man, & if that he may not finde a man to do the ſeruice for him, he muſt do it himſelfe. To whom the other Juſtices aſſented, Cokein thē ſaid, the tenant in this caſe ſhal pay reliefe to the value of the lande by yeare, to the
158 which was none aſſiſwere. & note that al they that hold of the king by graūd ſergeanty, hold of the king by knightes ſeruice, and the kinge of that ſhal haue ward, mariage, & reliefe, but ỹ king ſhal not haue of them eſcuage, if they hold not by eſcuage.

Petit ſergeantie.

159 TEnaunt by petit ſergeantie is where a manne holdeth his lande of our ſouereigne Lorde the kinge to yeeld vnto him yearely a Bowe, a ſworde a dagger, or a knyfe, or a ſpere, or a paire of gloues of Mayle, or a paire of ſpurs gilt, or an arrow, or diuers arrowes, or to yeelde ſuch other ſmall thinges touching
160 the warre, and ſuch ſeruyce is but ſocage in effect, for that that the tenaunt by his tenure ought not to goe nor to do any thinge in hys owne

owne proper person touching the warre. But
to yelde and pay yerely certaine thinges vnto
the kinge as a man ought to pay a rent. And 161
note ℣ no man holdeth lande by graunde ser-
geauntie nor by petite sergeauntie, but of the
kinge.

¶ Burgage.

¶ Enure in Burgage is where an auncient 162
Borough is, of the which the king is lord,
and they that haue tenements within the bo-
rough holde of the king their tenements, that
euery tenaunt for his tenement ought to paye
to the king a certeyne rent by yeare &c. And
such tenure is but tenure in Socage, and the 163
same maner is where an other lord spirituall
or temporal is Lorde of suche a borough, and
the tenauntes of the tenementes in such a bo-
rough hold of their Lorde to pay eche of them
yerely an annuel rēt, and it is called tenure in 164
Burgage, for that the tenements within the
borough be holden of the lord of the borough
by certaine rent &c. And it is to wit that the
auncient Townes called Boroughes bee the
most auncient and eldest Townes that bee
within England, for the townes that now be
cities or counties, in olde time were boroughs
and called boroughs, for of such olde townes
called boroughs came these Burgesses of the
Parliament to the Parlamēt when the king
hath summoned his Parliament.

165 ¶ Also for the greater part such boroughes haue diuers customes and vsages which be not had in other Townes, for some borough hath suche a custome, that if a man haue issue many sonnes and dieth, the yongest sone shall inherite al the tenements which were his fathers within the same borough as heire vnto his father, by force of the custome, the which is called borough English.

166 ¶ Also in some boroughs by the custome, the wife shal haue for her dower al the tenemẽts which were her husbands.

167 ¶ Also in some borough by the custome, a mã may deuise by his testament his lãds and tenements which hee hath in fee simple within the same borough at ỹ time of his death, & by force of such deuise he to whom such deuise is made after the death of the deuisour, may enter into ỹ tenements to hym deuysed, to haue and to hold to hym after the fourme and effect of ỹ deuise without any iuery of seisin therof to be made to him.

168 ¶ Also though a man maye not graunt nor geue his tenementes to his wyfe during the couerture, for that that his wife and he be but one person in the lawe, yet by such custome he may deuise by his testament hys tenementes to his wife to haue and to holde to her in fee simple, or in fee tayle, or for terme of lyfe, or of yeres, for ỹ such deuise taketh none effect, but after the death of the deuisor. And if a man at diuers times make diuers testaments and di-

uers

uers deuises &c. yet the last deuise & will made by him, shal stand and abide.

¶ Also by such custome a man may deuise by his testament that his executours may alyen and sel the tenements that he hath in fee simple for a certeine summe, to distrybute for the soule, in this case though the deuisour die seysed of the tenements, and the tenements dyscend vnto his heire, yet the executours after ỹ death of the testatour may sel the tenementes so deuised, & put out the heire, & thereof make a feoffement, alienation, and estate by deede or without deede, to them to whom the sale ys made vnto. 169

¶ And so may ye see here a case where a mā may make a lawfull estate, and yet hee hath nought in the tenementes at the tyme of the estate made, and the cause is for that, that the custome and vsage is suche. Quia consuetudo ex certa causa rationabili vsitata, priuat communem legem. For a custome vsed vppon a certeyne reasonable cause, barreth ỹ cōmon lawe. And note well, no custome is to bee allowed, but such custome as hath ben vsed by title of prescription, that is to saye, from time whereof is no minde. But diuers opinions haue bene of time out of mind, & of title of p̄scriptiō which is al one in ỹ lawe, for some men haue said that the time of minde shoulde bee saide for time of limitation in a writte of right, that is to saye, frō the time of kinge Richarde the first after the Conquest, as is geeuen by the statute of 170

Westminster the first, for that a writt of right is the most highest writt in his nature that may be. And in such a writ a man may recouer his right of the possession of his auncesters of the most auncient time that anye man may by any writ by the law. And in so much that it is geuen by the saide estatute, that in such a writ none shalbe heard to aske of ỹ seison of his auncestors of more longer time then of the time of kinge Richarde aforesaid, therfore this is proued that continuaunce of possession or other customes and vsages vsed after the same time is title of prescription, and this is certeine. And other haue sayde that well and trueth it is, that seisin and continuaunce after the limitation &c. is a title of prescription as is aforesaide and by the cause aforesaide. But they haue saide that there is also an other title of prescription that was at the common law before any estatute of limitation of writtes &c. and that it was where a custome or vsage or other thing had ben vsed for time whereof minde of man rũneth not to the contrary, and they haue saide ỹ this is proued by the pleading where a mã will plede a title of prescription of custome &c. he shal say that suche custome hath bene vsed from tyme whereof the memory of men runneth not to ỹ contrary, that is as much to say, when such a matter is pleded that no man then alyue hath heard one proofe to the contrarie, nor hath no knowledge to the contrarie, and in so much ỹ such title of prescription was at the common

lawe

lawe and not put out by any estatute. Ergo it abideth as it was at the common lawe, and ye sooner in so much that the said limitation of a writ of right &c. is of so long time passed.
Ideo quære de hoc, & many other customes and vsages haue such auncient boroughs.

¶ Also euerye boroughe is a towne, but not the contrary, more shalbe saide of customes in the tenure of villenage. 171

¶ Villenage.

TEnure in villenage is most properly when a villein holdeth of his Lord (to whom he is villeine) certaine landes & tenementes after the custome and manner, or els at the will of his Lorde, and to do hys villayne seruice, as to beare, bringe, and carrie out, the donge and filth of the Lord vnto ye land of his lord, there to lay it, cast it, and spread it abrode vppon the land, & to do such other manner of seruice, and some free tenaunts holde their tenements after the custome of certeine mannours by such seruice, & their tenure is called tenure in villenage, & yet they be no villeines, for no land holden by villenage or villeine landes, or anye custome rysinge of the land, shal neuer make a free mã villein. But a villeine may make free lãd to be villein lãd vnto his lord, as if a villein purchase land in fee simple or in fee tayle, the Lord of the villeine may enter into ye land & put out the villein & his heires for euer, and after 172

after the lord (if he will) may let the same lands to the villeine, to holde in villenage.

173 ¶ Also if a feoffment be made to a certain person or persons in fee, to the vse of a villeine, or if a villeine or any other persons bee enfeoffed to the vse of a villaine, what estate soeuer the villein hath in the vse, in fee tayle, for terme of life, or yeres, the lord of the villeine may enter in all those landes and tenementes lykewise as if the villeine had bene alone seysed of the demesne. And that is by the statute of Anno 19. H. 7. ca. 15. But if a free man will take any

174 lands or tenements of his lord by such villeins seruice, that is to say, to pay a fine to his lorde for his mariage, or for ỹ mariage of his sonne or his daughter, then shall hee pay such a fyne for the mariage &c. for that it is the folye of such a free man to take in such fourme lands or tenementes to holde of hys Lorde by such bondage, yet that maketh not the free manne villaine.

175 ¶ Also, euery villein, either he is villeine by prescription, that is to say, he and his auncestors haue bene villeines time out of mind, or he is villein by his owne cõfession in court

176 of recorde. But if a free man haue dyuers issues, and after confesseth himselfe to be villein to another in court of recorde, yet hys issues which he hath before the confession be free, but the issue which he shal haue after ỹ confession &c. shalbe villeines.

177 ¶ Also if a villeine purchase lands and alie-

neth

neth the same lãds to another before his lord enter, then the lord may not enter, for it shalbe iudged his owne folly that he entred not whẽ the lande was in the villaines hands. And so it is of his other goods, for if the villeyne buy & sell, or geue goods to another before that the lord seised the goods, then the Lorde may not seise thẽ, but if the lorde before any such sale or gift commeth within the house of the villeine where such goods be, & there openly amõg the neighbours clayme the same goods to be his, and so seyse parcel of the same in name of seysin of all the goodes &c. This is sayde a good seisin in the lawe. And the occupation that the villein hath after such claime in ỹ goods, shall be taken in the lawe, the right of the Lorde. But if the kinge haue any villeyne that purchaseth landes & alieneth before that the king enter, yet the kinge maye enter in the lande in whose handes the land commeth to. Or if the villeine buy or sell dyuers goodes before that the kinge seyse the goodes, yet the kynge may seyse them in whose handes soeuer they bee. Quia nullum tempus occurrit regi, for no tyme renneth against the king. 178

¶ Also yf a manne let lande to another for terme of lyfe, sauing the reuersion to hym, and a villayne purchaseth of the lessour the reuersion, in this case it seemeth that the lord of the villayne may incontinent come to the lande and clayme the same reuersion as Lorde of the same villayne, and by thys clayme, the 179

not reuersion can be claimed but vpon ỹ land & he by his comming vpon ỹ land for that purpose is not tut passer

the reuersion is incontinent in him, for in any other forme he may not come to the reuersion for he may not enter vpō the tenant for terme of lyfe, and if he ought to auoide till after the death of the tenant for terme of life, then hap-pely he might come to late, for parauenture ỹ villayne wyll graunt or alyen it an other in
150 the lyke of the tenaunt for terme of life. In the same maner it is where a villeine purchaseth the auowson of a church full of an incumbent, that the Lorde of the villeyne maye come to the saide Churche and clayme the aduowson, And by this claime the aduowson is in hym, for if he abide tyll after the death of the incū-bent and then present his clerke to the sayde Church: Then in the meane tyme the villein might alien the auowson &c. & so put out the Lord from his presentation.

151 Also there is a villaine regardant & a vil-laine in grosse. Villayne regardant is as yf a'nā be seised of a manour to which a villein is regardant, and hee that is seised of the sayd manour, or they whose estate he hath in the same manour haue bene seised of the said vil-lein & of his auncesters as villains regardāt to the manour from time out of minde, And villein in grosse is where a man is seised of a mannour to the which a villein is regardant, he graūteth the same villein by his deede vn-to an other, thē he is villain in grosse, and not regardaunt.

152 Also if a manne and hys auncesters whose

whose heire hee is, haue beene seysed of a villaine and of his auncestours as villeynes in grosse tyme out of mynde, such beene villaines in grosse. And note well that of such 183
thinges which may not bee graunted nor alyened without deede or fyne, a man that will haue such thinges by prescription may not otherwise prescribe but in him and hys auncetters whose heire he is, and not by these wordes, in him and in those whose estate hee hath, for that that he may not haue their estate without deede or writing the which behoueth to be shewed to the court if hee will haue any aduauntage of this, & because that the graunt and the alienation of a villaine lyeth not without deede or other writinge: a man may not prescribe in a villayne in grosse without shewing of writing, but in him selfe that claimeth the villaine and in his auncestors whose heire hee is. But of those thinges which bee regardaunt or appendaunt to a mannour or to other landes or tenementes, a manne may prescribe that hee and they whose estate hee hath were seised of the manour or of such landes or tenementes as regardauntes or appendauntes to the manour or to such landes or tenementes &c. from tyme out of mynde, and the cause is for this that such a mannour, landes and tenementes may passe by alienation without deede &c. And it is to witte that nothinge is named 184
regardaunt to a mannour but a villeyne. But certayne other thinges as auowsons and

commune

commune of paſture &c. be named appendauntes to the mannour or to other landes and tenementes.

185 ¶ Alſo if a man in court of Record knowledge him ſelfe to bee villeine that never was villeyne beefore, ſuche one is villeyne in groſſe.

186 ¶ Alſo a man that is villeine is called villeine and a woman that is villeine is called niefe, and a man that is outlawed is called an outlawe, and a woman that is outlawed is called a wayue.

187 ¶ Alſo if a villein take a free womā to wife, the iſſue betwene them ſhalbee villeine. But if a niefe take a free man to huſbande, their iſſue ſhalbe free. And that is contrary to ẏ law ciuile, for there hee ſayeth that partus ſequitur ventrem.

188 ¶ Alſo no baſtard may be villeine, but if that he wil knowledge him ſelfe to be a villeine in court of Record, for he is in the law quaſi nullius filius, as the ſonne of no man, for that hee may be inheritour to no man.

189 ¶ Alſo euery villeine is able and free to ſue al manner of actions againſt euery perſon except againſt his Lord to whom he is villeine, and yet in certayne thinges hee may haue againſt his lord an action as of appelle for the death of his father, or of his other aunceſters whoſe heire hee is, 190 alſo a niefe which is rauiſhed by her Lorde may haue appele of rape againſt him.

it was founde by vrdict
that Henry the sonne
of Dakine which
was ye wife of Rob
Radwell deceased
was borne [illegible]
vndecim dies p[ost]
vltimum temp[us]
legitimu[m] mulieri-
bus constitutum &
it was adiudged that
hee was not
lawfull sonne
Trin. 18. E. 1. ro. 61.

¶ Alſo

¶ Also if a villeine bee made executour to another, and the Lord of the villeine was indebted to the testatour in a certeine summe of money the which is not paied, in this case the villeine as executour to ỹ testatour shall haue an actiõ of debt against his lord, because he shal not recouer the det to his proper vse, but to the vse of the testatour. 191

¶ Also the Lorde may not take of the possession of such a villeine that is executour of the deads goods, and if hee doo, the villaine as executour shall haue an action of Tresaps against his Lorde for the same goods so taken, and recouer dammages to the vse of the testatour. But in all these cases it behoueth the lord (which is defendaunt in such actions) to make protestation that the plaintife is his villeyne, or els the villeyne shalbee enfraunchised though the matter be found for the lord against the villeine, as it is said. 192

¶ Also if a villeine sue an action of Trespas or other action agaynst his Lorde in one shire, and the Lorde sayeth that hee shall not bee answered, for that hee is villeine regardaunt to his Mannour in an other Shire, and the pleyntife sayeth that hee is franke and of free estate and no villeyne, this shall bee tryed in the Shire where the playntife hath conceyued his actyon, and not in the shire where the Mannour is, and this is in fauour of liberty, as it is aiudged. M. 40. E. 3. 193

And

And for thys cause was made a statut in the xx. yere of Richard the secōd, ỹ tenure of which entueth in such forme.

¶ Also for that where many villaines and neues as well of great lordes as of other folke spirituall and temporal, flee and go into Cities and places fraunchiseed as the citie of London and other like places, and saine dyuers suites against their lords because they wouldе make thē selues to be enfraunchiseed, it is accorded & assented that the Lordes nor none other shalbe forbarred of their villaynes because of their aunswere in the lawe. By force of which statute if any villaine will sue any manner of action to his owne vse in any shiere where it is hard to trie &c. against his lorde, hys Lorde may chose to plede that the plaintif is his villaine, or to plede another matter in barre, and if they be at issue and the issue bee founde for the Lord, then the villain is villain as he was before by force of the same statute. But if the issue bee found for the villeine. then is the villaine franke and free for that the lord tooke not for his plee that the villeine was his villaine, but tooke it by protestation.

¶ Also the Lorde may not mayme hys villaine, for if hee mayme his villayne he shal of that bee indicted at the kinges suite. And if hee be of that attainted, he shall for that make greeuous fine and raunsome to the king. But it seemeth that the villein shal not haue by the lawe

lawe any appelle of mayme againſt his Lord, for in appelle of mayme a manne ſhall not recouer but his dammages. And if the villeyne in that caſe recouer dammages agaynſt his Lorde, and hath thereof execution, the Lord may take that that the villaine hath in execution from the villaine, and ſo the recouery ſtandeth voide.

¶ Alſo if the villaine be demaundant in an action real or plaintife in an action perſonell againſt his lord, if the lord wil plede in diſabylitie of his perſon, he may not make plaine defence, but he ſhal defend but the wronge & the force, & demaunde iudgement if hee ſhall bee aunſwered and ſhew his matter by & by how he is villaine & demaund iudgement if he ſhall be aunſwered. 195

¶ Alſo ſixe manner of men there be againſt whom if they ſue actions &c. iudgement may bee aſked if they ſhalbee aunſwered. One is where the villaine ſueth an action &c. agaynſt his lord, as in caſe aforeſaide. The ſeconde is where a man outlawed vpon an action of Dette or treſpas or vpon any other action or indictment, the tenaunt or the defendant may ſhewe al the matter of the record and the outlawry, & demaund iudgment if he ſhalbe aunſwered becauſe that hee is out of the lawe to ſue any action during the time that he is outlawed. The thirde is where an alien borne out of the allegeaunce of our ſoueraigne Lord the kinge, if ſuch alien ſue anie action reall or per- 196

167 if an Executor or Adm sueth an action, utlawrie in ye plt shall not disable him because ye suite is in auter droit 8

198

perſonal, the tenant or defendant may ſay that he was borne out of the kings allegeance, and aſke iudgement if he ſhalbe aunſwered. The
199. foſwerth is, ſa here a man by iudgement geuen againſt him vppon a writte of Premunire facias &c. is out of the kings protection, if he ſue any action, and the tenaunt or defendaunt ſhew all the record againſt him, he may aſke iudgement if he ſhalbe aunſwered: for the law & ỹ kinges writtes, bee the thinges by which a man is protected & holpen, & ſo during the time ỹ a mā in ſuch caſe is out of the kinges protection, hee is out of helpe & protection by the kings law or by the kings writ.

200. ¶ The fift is, where a man is entred and profeſſed into religion, yf ſuch a perſon ſue an action, the tenant or defendant may ſhew that ſuch a one is ētred into religion in ſuch a place into the order of Saint Benet, and is there a monke profeſſed, or in the order of fryers mynours or preachers, and is there a fryer profeſſed, and ſo of other orders of religion &c. and aſke iudgement if he ſhalbe aunſwered, & the cauſe is this, that when a man entreth into religion and is profeſſed, he is dead in ỹ law, and his ſonne or next cō in incontynent ſhall inherite him alſwell as though hee were dead in deede, and when he entreth into religion, hee may make his teſtament & his executours, & they may haue an action of debt due to hym before his entre into religion, or any other action that executours may haue if he were dead in deede,

in deede. And if he make none executors whe he entreth into religion, then the ordinary may commit the administration of his goods to o= thers as if he weare dead in deede. The 201
fifte is where a man is accursed by the lawe of holie Church, and he sueth an action reall or perso= nal, the tenaunt or defendaunt may plede that he that sueth, is accursed, & of this it behoueth him to shewe the Bishops letters vnder his seale, witnessing the accursing, and aske iudge= ment if he shalbe answered &c. but in this case if the demaundaunt or pleintife cannot deny it. the writ shall not abate, but the iudgement shalbe that the tenaunt or defendaunt shall go quite without day. for this, that when the de= maundant or pleintife hath purchased his let= ters of absolution, & shewed them to the court he may haue a resummons or a reattachment vppon his originall after the nature of his writ &c. But in the other cases the writ shall abate &c. If the matter shewed may not bee gaynesaide.

Also if a villein be made a seculer priest, yet 202
his lord may seise hi as his villein, & seise his goods &c. But it seemeth ỹ if the villein enter into religiõ & is professed &c. that the lord may not take him nor seise him for ỹ hee is dead in the lawe. And no more then if a free man take a wife & lord may not take ne seyse ỹ wife of the husband. But his remedye is to haue an action against the husbande, for that hee tooke his wife to wife without hys will

And so may the Lorde haue an action against the soueraigne of the house that taketh & admitteth his villaine to be professed in the same house without lycence and will of his Lorde &c. and shal recouer his dammages to the value of the villaine, for he ꝑ is professed monke &c. shalbe a monke, and as a monke shalbe taken for terme of his life natural, except hee bee derayned by the lawe of holie church, and hee is holden by his religion to kepe his cloyster, and if the lord may take him out of the house, then he should not liue as a dead person, nor after his religion, which should be inconuenīēt &c. For if there bee wardeine in chiualrie of bodie and landes of a childe within age, if the child when he cōmeth to the age of xiiij. yeres enter into religion & is professed, the wardeine hath none other remedy as to ꝑ warde of the bodie, but a writte of Raushment of warde against the soueraigne of the house. And if any being of full age that is cosin & heire vnto the childe enter into the lande, the wardeyne hath no remedy as to the warde of the lande, because that the entre of the heire of the childe is lawful in such case.

203

204 ¶ Also in many diuers cases the Lorde may make manumission and infraunchising to hys villaine. Manumission is properly when the Lord maketh his deede to his villeyne to enfraunchise him by this worde Manumittere, which is as much to say, as extra manū, & extra potestatē alterius ponere, as to put him out of the

of the handes and the power of another. And for this that by such a deede the villein is put out of the hande power of his Lord, it is called manumission. And so euery manner of enfranchising made to a villeine, may bee sayde a manumilsion. Also if the lorde make to hys 205
villeine an obligation for a certeine summe of money, or graunte vnto hym by his deede an annuitie, or let him by his deede, landes or tenementes, for terme of yeares, the villayne is enfraunchised. Also if the Lord make a feoffe- 206
ment to hys villeyne of any landes or tenementes by deede or without deede in fee simple or fee tayle, or for terme of yeres, and deliuereth vnto him the seisin, this is an enfranchisinge, but yf the Lorde make to him a lease 207
of landes or tenements, to holde at the will of the Lorde, by deede or without deede. this is no enfranchising, for that he hath no maner of certeintie nor suertie of his estate, but that the Lorde may put him out when he will. Also if 208
a Lorde sue against hys villayne a Precipe & reddat, if he recouer or be nonsuit after appearance, this is a manumission, for this that hee may lawfullye enter into the lande without such suit. In the same maner it is if hee sue agaynst his villayne an accion of Dette, or of accompt, or of couenaunt, or of trespas, or such other, this is an infraunchisinge &c. for this that hee may enpryson his villain, & take his goods without such suit. But if the Lord sue his villeine by appeale of felonye, thys is

none enfraunchising to the villein though the matter of the appel is found against the Lord, because that the lord may not haue the villein hanged without such suit. But if the villeine were no: ondited of the same felony before the appeale sued against him, & is acquited of the felony, so that he recouer dāmages against the Lord for the false appeale: Then in this case ỹ villein is enfraunchised because of the iudgement of dammages that was geuen to him against his lorde. And more cases and matters there be by ỹ which a villein may be enfraunchised against his lord. Sed de illis quære. 209 Also if a Lord of a mannour will prescribe that it hath bene accustomed within hys manour, tyme out of minde that euery tenant within ỹ same manour that marieth his daughter to any man wout licence of ỹ lord of the manour shal make fine to the Lord for the time being, this prescription is voyde, for none ought to make such fines but onely villaines, for euery free man may freely marie his daughter to whom it pleaseth him, and his daughter. And because that this prescriptiō is against reasō, 210 such prescription is voide. But in the shire of Kent of lands holden in gauelkind where by the custome vsed time out of minde ỹ children males ought euenly to enherite, this custome is allowable, for this ỹ it is with some reason, because that euery sonne is as great a gētleman as the elder sonne, and because of that more great honour and valure shall grow the if he

if he had nothinge by his auncestours, where peraduenture he might not so growe &c.

Also, where by custome called borough En- 211
glish, in some borough ỹ yongest sonne shall inherite al the tenements &c. This custome also standeth with reason, because that the yonger sõne if he lacke father & mother (because of his yõg age) may least of al his brethrẽ help himselfe &c. But if a mã wil prescribe ỹ if any cat- 212
tell were vpon ỹ demesnes of his maner there doing dãmage, ỹ the lord of the manor for the tyme beinge hath vsed to distraine thẽ and the distres to retein til fine were made to him for the dãmages at his wil, this prescription is void, because it is against reason ỹ if wrõg be done to a man, ỹ he therof should be his owne iudge, for by such way if he had dãmages but to ỹ value of an halfe peny, hee might assesse & haue therfore an C.li. which should be against al reason, & so such prescription or anye other prescription vsed if it be against al reason, this ought not nor wil not be allowed before Iudges, Quia malus vsus abolendus est.

¶ Rents.

There manner of rents there bee, that is to 213
say, rent seruice, rent charge, & rent secke, rent seruice is, where a man holdeth his lande of his lord by fealty and certeine rent, or by other seruice, and certeine rent.

¶ Or by homage, fealtie, and certeine rent.

And if rent ſeruice at any day that it ought to be payd be behinde, the Lord may diſtreine for that of cõmon right. And if a man now will
214 geue landes or tenementes to another in the taile, yelding to him certeine rent by yere, hee of common right may diſtrein for the rent behinde, though that ſuch gift was made without a deede, becauſe that ſuch rent is rent ſer-
215 uice. but in ſuche caſe where a man vpon ſuch a gift or leaſe, will reſerue to him rent ſeruice, it behoueth that the reuerſion of the landes and tenementes be in the donour, or in the leſſour, for if a man will make a feffement in fee, or will geue landes in the tayle, the remaynder ouer in fee ſimple without a deede, reſeruinge to him certaine rent, ſuche reſeruing is void, becauſe ꝑ no reuerſion is in the donour, and ſuch a tenant holdeth his lande immedyatly of the Lorde of whom his donour helde.
216 And this is by force of ꝑ eſtatut of weſtm 3. Cap. 1. Quia emptores terrarum. For or before the ſame eſtatute, if one made a feoffement in fee ſimple by deede or without deede, yeldinge to him and to his heires, certeine rent, this was rent ſeruice, and for this hee myght diſtreyne of cõmon right. And if he made no reſeruatiõ of any rent, nor of anye ſeruice, yet the feoffee helde of the feoffour by ſuche ſeruice as the
217 feoffour held ouer of his lord next aboue. But if a mã by deed indẽted at this day, make ſuch a gyft in the tayle, the remaynder ouer in fee &c. or feoffement in fee, and by the ſame indenture

ture reserueth to him and to his heires, a certeine rent, and that if the rent be behinde, that it shalbe lawful to him & to his heires to distreine &c. such rent is rent charge, because such landes and tenements be charged of such dystresse by force of the writinge onelye, and not of cõmõ right. And if such a mã in such a deede endented, reserue to him and to his heires certein rẽt without any such clause set or put in the deede, that hee may distraine &c. that such rent is rent secke, because that hee cannot dystraine to haue the rent if it bee denyed by the same distresse, & if he were neuer seised in this case of the rent, he is without remedy as shal be saide hereafter. Also if a man seised of certeine land graũt by his deede Polle, or by enденture, a yearely rent illuinge out of the same lande to another in fee simple or in fee tayle, or for terme of life &c. with clause of distresse, &c. then that is rent charge, & if it be without clause of distresse, then it is rent secke, and note well, that rent secke Idem est quod redditus siccus, because that no distresse is incident to it. 218

Also if a man graunt by his deede rent charge to another, & ỹ rent is behind, the graũtee may choose if he wil sue a writ of Annuity of it against the grauntour, or distraine for the rent behinde, and the distresse to withhold till he bee of that payde. But he may not doe and haue both together, for if hee take a writte of Annuitie, thẽ ỹ land is discharged. And if hee sue not a writ of Annuitie, but distraine for ỹ 219

arrera-

arrerages, & the tenant sueth a Replegiare &c. & the graūtee auowеth the taking of the distresse in the land &c. in court of recorde, then is the land charged, & the person of the graūtour discharged of an accion of Annuitie.

226 ¶ Also, if a mā will that another shal haue a rent charge issuynge out of his landes, but he will not that his person shalbee charged in any manner by a writt of Annuitie, then hee may haue such a clause in the end of his deede. Prouiso semper quod presens scriptum, nec aliquid in eo specificatum, non aliqualiter se extendat ad onerandum personam meam per breue de annuali redditu. Sed tantummodo ad onerandum terram et tenementa prēd, de annuali redditu prædicto. And the is the land charged, & the person of the graūtour discharged.

221 ¶ Also, if a mā make such a dede in such maner, ꝙ if A. of B. be not perely paied at ꝙ feast of Christmas for terme of life of xx.s. of lawful money, ꝙ then it shalbe lawful to the sayd A. of B. to distrayne for it in the mannour of F. &c. this is a good rent charge, because that the manour is charged of the rent by way of distresse. And yet the person himselfe ꝙ made such a dede is discharged in this case of an acciō of annuitie, because ꝙ hee graunted not by his deede any annuitie to the said A. of B. but graunted onely that hee may distreyne for his annuitie.

222 ¶ Also, if a man hyre a rent charge to hym and to his heires issuinge out of certein land,

if hee

if hee purchase any parcel of the lande to him and to his heires, all the rente is extinct and annulled because that rent charge may not in such maner be apportioned, but if a man that hath rent seruice purchase parcell of the lande whereof the rent is, thys shall not extinct all, but for the portion, for that rent seruice in such case may bee apportioned and shalbe apportyoned after the value of the lande, but if a tenaunt holde hys lande by seruice to yelde to hys lorde yerely at suche a feast an horse, or an hauke, or suche thinge semblable, if in suche case the lorde purchase parcel of the lande, the seruice is gone, because that such seruice may not bee seuered nor apportioned, but if a man 223
holde his lande of another by homage, fealtie, and escuage, and by certeine rent, if the Lorde purchase parcell of the lande &c. In that the rent shalbe apportioned as is aforesayde, but yet in this case the homage and fealtie abideth whole to the Lorde, for the Lorde shall haue the homage and fealtie of hys tenaunt for the remenant of landes and tenementes holden of him as hee hadde before &c. for this that suche seruices bee no annuell seruices, and may not be apportioned. But the escuage may and shal be apportioned after the quantitie and rate of the lande.

¶ Also if a man haue a rent charge, and hys 224
father purchaseth parcell of the tenemts charged in fee, and dyeth, and that parcell discendeth to his sonne & hath the rent charge. now

this

this rent charge shalbe appoꝛcioned after the
value of the land, as is afoꝛesaid of rēt seruice,
because that suche a poꝛcion of the land pur-
chased by the father, commeth not to the sōne
by his owne deede, but by discent and course
of the lawe.

225 ¶ Also if there be Loꝛde and tenant, and the
tenant holdeth of his loꝛde by fealtie and cer-
teine rent, and the Loꝛd graunteth the rent by
his deede to another &c. reseruinge to him the
fealtie, and the tenant attourneth to the grau-
tee of the rent, nowe such rent is rent seck to ꝑ
grantee, foꝛ this that the tenementes bee not
holden of the grauntee of the rent, but be hol-
den of the Loꝛd that receyueth to him fealtie.

226 And in ꝑ same manner it is, where a mā hol-
deth his land by homage, fealtie, and certeyne
rent, if the loꝛd graunt the rent, sauing to him
the homage, such rent after such grau̅t is rent
secke, but where landes oꝛ tenementes bene
holden by homage, fealtie, and certaine rent, if
the Loꝛd will graunt the homage of his land
by his deede to another, sauing to him the re-
menant of the seruices, and the tenant attur-
neth to him after the fourme of the graunte,
nowe in this case the tenant holdeth his land
of the graunt: and the loꝛde that grauneth the
homage, shall not haue but the rent as rent
secke, and shall neuer distraine foꝛ the rent foꝛ
this, that neyther homage, noꝛ fealtie, noꝛ es-
cuage may be said secke, foꝛ he ꝑ hath oꝛ ought
to haue of his tenaunt homage, oꝛ fealtie, and
escuage

escuage, may of common right distraine for it
yf it be behinde, for homage, fealty, & escuage
been services by which lands and tenementes
be holden, and therefore such that in maner may be
taken but as services. But otherwise is of 227
rent that was once rent service, for this that
whē it is severed &c. by the graunt of the lorde
frō the other services, it may not be saide rent
service for this ỹ it hath not to it fealtie which
is incident to every maner of rent service, and
for this it is said rent seeke.

¶ Also if a man let land to another for terme 228
of life, reseruinge to him certeine rent, if hee
graunt the rent to another saving to him the
reuersion of the land so letten by his deede &c.
such rent is but rent seeke, for this that the
graunteee hath nothinge in the reuersion of the
land. But if he graūt the reuersion of the land
to another for terme of life, and the tenant at-
tourneth &c. then hath the graunteee the rent
as rent service, because hee hath the reuersion
for terme of life. And so it is to be understoode 229
that if a man geeue landes or tenementes in
the taile, reseruinge to him and to his heires
certaine rent, or let land for terme of life reser-
uing certaine rent, if hee graunt the reuersion
to another, and the tenaunt attourneth, all the
rent and service passeth by the worde of the
graunt of reuersion for this that all the rent
and service in such case bee incidentes to the
reuersion and passe by the graunt of reuersi-
on. But though he graunt the rent to another

the

the reuersion passeth not by such graunt &c.

230 And so note wel the diuersitie. And to it is holden Pasche 12. E. 4. But it is iudged Mich. xxij. lib. All. where as the seruices of the tenaunt in taile were graunted, that that was a good graunt, yet notwithstanding the reuersion remaines.

231 ¶ Also if there be Lord, meine, and tenant, and the tenaunt holdeth of the meine by ỹ rent of fiue shillinges, and the meine holdeth ouer by twelue pence, if the lord aboue purchate ỹ tenaunty in fee, then the seruice of the meinaltie is extinct, for this, that whē the lord aboue hath the tenaunty, hee holdeth of the Lorde next aboue him. And if he ought to holde yt of him that was meine, then hee shoulde hold one selfe tenauncye immediatlye of dyuers Lordes which shoulde bee inconuenient, and the lawe will sooner suffer a mischiefe then an inconuenience, and for this the seigniourie of

232 the meinaltie is extinct. But in so much that the tenant held of the meine by fiue shillings, and the meine held but by xij. d. so that he had more auauntage by iiij. s. then he payed to his Lorde. hee shall haue the sayd iiij. s. as a rent seeke perely of the Lorde that purchaseth the tenauncie.

233 ¶ Also if a maune that hath rent seeke is once seysed of anie parcell of the rent, and after if the tenaunt will not paye the rent that is behynde. this is hys remedie. It behoueth him to go by him selfe, or by another,

to the

to the landes and tenementes, whereof the rent is illuing, and there to demaund the arrerages of the rent. And if the tenaunt denie to pay it, thys denyinge is a disseysin of the rent. Also, if the tenaunt at the time bee not readie to pay it, this is a denying and a disseisin. Also, if the tenaunt, nor none other bee dwelling vpon the lands or tenementes when he asketh the arrerages &c. this is a denying in law, and a disseisin in deede, and of such disseisins hee may haue an action of Nouel disseisin agaynst the tenaunt, and recouer the seysin of the rent, and the arrerages, and his dammages and costes of his writ and of hys plee &c. And if after such recouerie the rent bee another tyme denied him, then he shal haue a redisseisin and recouer double dammages. And it is to bee had in minde, that this name Assise is Equiuocum. For sometyme it is taken for a Iurie, for in the beginning of the recorde of Assise of Nouel disseysin, the recorde shall begynne thus. (Assisa venit recognit) which is to say, that iuratores veñ recogñ, and the cause is for this, that by the writ of Assise is commaunded to the sherife Quod faciat xii. liberos & legales homines de vicineto &c. videre tenementum illud, & nomnia eorum imbreuiari, & quod summoñ eos per bonos summoñ quod sint corum Insticiarijs & c. parati inde facere recognitionem &c. And for this, that by force of such an original writte, a Panell by force of the same writ ought to bee retourned &c. It is 134

sayd

ſayde in the beginning of the recorde in aſſiſe, Aſſiſa venit recogñ &c. Alſo in a writ of right it is commonly ſayde, that the tenant may put him in god & in the great aſſiſe &c. Alſo there is a writte in the Regiſter, called De magna aſſiſa eligenda, ſo is this a good proofe that this name Aſſiſe, ſometime is put for the Jurie, and ſometime it is taken for al the writte of aſſiſe, and after that entent it is moſt properly and moſt commonly taken, as aſſiſe of Nouel diſſeiſin is taken for all the writ of aſſiſe of Nouel diſſeiſin. In the ſame manner aſſiſe of cōmon of paſture is takē for al the writ of aſſiſe of cōmon of paſture, & Aſſiſe of Mortdaunceſter, and aſſiſe of Darreine preſentement &c. But it ſeemeth that the cauſe why ſuch writtes at the beginning were called aſſiſes, is for this, that by every ſuch writ it is commaunded to the ſherife that he ſummon xij. &c. Which is as much to ſay, that he ought to ſummon a Jurie &c. and ſometyme aſſiſe is taken for an ordynaunce, for to ſette certaine things in a certeine rule and diſpoſition, as an ordynance that is entred in the auncient eſtatutes, is called Aſſiſa panis & ſeruicie. Alſo if there bee lorde and tenaunt, and the Lorde graunteth the rent of his tenaunt by deede to another, ſauyng to him the other ſeruices, and the tenaunt attourneth, that is a rent ſecke as yt is aforeſayd. But if the rent bee denyed hym at the next day of payment, he hath no remedy, for this that he had not thereof any poſſeſſiō.

235
an attournemt (wch is
an agreemt to the
grant) is noe seisin
of ye rent

But

But if the tenant when he attourneth to the
graūtee, or after, will geue a peny or an halfe
peny to the graūtee in ỹ name of seisin of rēt,
then if after at the next day of paiment the rēt
be denyed hym, hee shall haue an assise of Nou-
uel disseisin, and so it is if a man graunt by his
deede a yerely rent issuing out of his lande to
an other &c. If the graūtour then after paye
to the graūtee .j. ď. or an halfe peny in ỹ name
of seisin of the rent, then if after the first day of
payment the rent be denied, the graūntee may
haue an assise, or els not. Also of rēt seck a mā 236
may haue an assise of Mordaunceſter, or a writ
of Ayel or Cosinage, and all other maner of ac-
tions reals, as the case lyeth, as he may haue
of any other rent.

¶ Also there be three causes of disseisin of rēt 237
seruice, that is to say, relcous, repleuin, & en-
closure. Relcous, is when the lord distreineth
in the land holden of him for his rent behinde,
if the distresse bee relcued frō him, or the Lord
come vpon the land, and would distreyne, and
the tenaunt or an other man will not suffer
him &c. Repleuin is when the lord hath dys-
trained, and repleuin is made of the distresse
by writt or by plaint &c. Enclosure is if the
landes and tenements bee so enclosed, that the
Lord may not come within the lande and te-
nementes for to distraine, and the cause why
such things so done bee disseisins made to the
Lord, is for this, ỹ by such things the lord is
disturbed of the meane by which hee ought to

238 haue come to his rent. And fower causes be of
disseisin of rent charge, that is to say, rescous,
repleuin, enclosure, and denyer, for denying is
a disseisin of rent charge as it is aforesayde of
239 rent secke. & two causes bee of disseisin of rent
secke, that is to say, enclosure, and denyer, and
240 yet it seemeth that there is an other cause of
disseisin of al the three rents aforesaide, that is
when the Lord is going to the land holden of
him for to distraine for the rent being behinde,
the tenãt hearing this, encõtreth him & fore-
stalleth him the way with force and armes &
manaceth him in such fourme that he dare not
come to the land for to distraine for his rẽt be-
hind &c. for doubt of death, or bodely hurt, this
is a disseisin, for this that the lord is disturbed
of the meane whereby hee ought to come to
his rent, and so it is if by such forstallinge and
manaasinge hee that hath rent charge or rent
secke is forstalled, or dare not come to ỹ lande
to aske the rent behinde.

The thirde Booke.

Parceners.

241 Parceners bee in two manners, that is to
say, parceners after the course of the com-
mon lawe, & parceners after the custome.
Parceners after the course of the common
lawe be, where a man or a woman is seised of
certeine land or tenementes in fee simple or fee
taile and hath none issue but daughters & dieth
and

and the tenements discend to the daughters & the daughters enter into the lands & tenemts so to them discended then they be called parceners & bee but one heire to their auncestor & they be called parceners for this, ꝑ by the writ that is called Breve de participatione facienda the lawe will constraine them that participation shalbe made among them, & if there be ij. daughters to whom the land discendeth then they be called two parceners and if they be iij. daughters they be called three parceners, and fower daughters fower parceners. & so forth.

and if a man seised of lands, in fee simple or in 242
fee taile die without issue of his bodie, and the tenements discend to his sisters they be parceners as is aforesaid. In the same manner it is where he hath no sisters but the lād discendeth to his auntes, they be parceners, but if a man have but one daughter shee may not bee saied parcener, but daughter and heire. And 243
it is to weete ꝑ partition betweene parceners may bee made in diuers maners, one is when they agree to make partition and make partition of the tenementes, as if there bee two parceners to deuyde betwene thē the tenemts in two partes euery part by him selfe in seuerality of euen value, and if there be three parceners to deuyde the tenements in three partes in seuerality. In other partiō there is to chose 244
by agreement betwene them & certein of their frinds to make the partition betwene thē of ꝑ lands and tenements in the fourme aforesaid.

And in such cases after such partition the eldest daughter shall chose first one of the parts so devyded which she will have for her part. And then the second daughter after her an other part &c. if it so bee that there be many sisters &c. If it be not that they bee otherwise agreed betwene them, for it may be agreed betwene them that one of them shall have such tenementes and an other such tenementes &c. without any such first election and the part 245
that the elder sister hath, is called in latin Divisia pars, but if the parceners agree that the elder sister shall make partition of the tenementes in the fourme aforesaid, and if she do, then it is said that the elder sister shall chose the laste parte after eche of her other sisters.
Another partition and allotting there is. as if 246
there be fower parceners, & after such partition made of the landes euery part of the lande is by it selfe written in a little scrowe, and it is couered al in waxe in a maner of a litle ball so that no man may see the scrowle, thē ar the fower balles of waxe put in a Bonet to kepe in the handes of an indifferent man, and then the elder daughter first shal put her hand in ỹ bonet which shal take a balle of waxe and the scrowe within the same ball for her purparty, and then the second sister shal put her hand in ỹ bonet & shal take another, & so thē the thirde sister the third ball &c. and in this case it behoueth eche of them to hold them to their chāce and allottement.

Also

¶ Also another partition there is, as if there 247
be fowre parceners, and they will not agree
ꝑ partition shalbe made betweene them, then
one of thē may haue a writ de participatione fa-
ciendā against the other three sisters, or two
may haue a writt of parricipatione facienda a-
gainst the other, or ꝑ three against ꝑ fowerth
at their election, and when iudgement shalbe 248
geuen vpon such a writt, the iudgement shal-
be such that partition shalbe made betweene ꝑ
parties, and the shirife in his proper person
shall go the landes and tenementes &c. and
that he by the othe of xij. true men of his bay-
liwike &c. shall make partition betweene the
parties, the one party of the same landes shall
be assigned to the plaintife or to one of ꝑ plain
tifes, & an other party to an other &c. not ma-
king mention in the iudgement of the eldest
sister more then of the yongest, & of the parti- 249
tion that he hath thus done, he shal make no-
tice to ꝑ Iustices &c. vnder his seale and the
seales of the xij. &c. & so in this case maye you
se that the elder sister shall not haue the first
election &c. but the shirife shal assigne the part
that she shal haue &c. & it may be that ꝑ shirife
will assigne ꝑ first part to the yonger sister, &
the last part to the elder.

And note wel partition by agreement bee- 250
twene parceners may by the lawe be made a-
monge them as wel by worde without deede,
as by deede.

¶ Also, if two meales discende to two par- 251

teners and the one mese is worth by yere x.s. and the other but x.s. by yere. in this case partition may be made betwene them in such fourme, ỹ the one parcener shall haue the one mese, and the other parcener shall haue the other mese, and she that shall haue the meale of xx.s. and her heires shal pay a yerely rent of v.s. thinge out of the same meale to thother parcener & to her heires for euer, because that
252 euery of them shall haue euen in value, and such partition made, is good ynough, and the same parcener that shall haue the rent of v.s. and her heires maye distrayne for the rente of common right in the same mese of the value of xx.s. if ỹ rent of v.s. be behynde at any time in whose handes soeuer the same mese commeth, thoughe there was neuer writynge
253 made of it betweene them. In the same maner it is of partition of al māner of lands and tenementes &c. where suche rent is reserued to one, or to diuers parteners vppon such partition &c. but suche rent is not rent seruice, but rent charge, of common ryght had and reser-
254 ued for egality of the partition. And note well that none bee called parteners by the common lawe but women or the heires of women, and wyych come by landes and tenements by discent, for if sisters purchase lands or tenementes of this they bee called Joint-
255 nauntes and not parteners. Also if two parteners of lande in fee simple make partition betweene them &c. and the parte of the one valueth

valueth much more then the part of the other if they were at the tyme of partition of ful age, that is to say, of xxi. yeres, thē they alway shal abide and neuer be defeated, but if ꝯ tenemētꝭ whereof partition is made, bee to them in fee tayle, and the part that ꝯ one hath is much better in yerely value then the parte of the other, howbeit that they bee excluded durings their lines to defete the partition, yet if the parcener that hath ꝯ ieller part in value hath yssue and dyeth, the yssue may disagree to the partition, and enter & occupy in common that other part ꝯ is allotted to her aunt, and so the aunt may enter and occupy in common the other part allotted to her sister, as if no partition thereof had ben made &c.

¶ Also, if two parceners of tenements in fee 256
take husbands, and they and their husbandes make partition betweene them, if the part of ꝯ one bee lesse in yerely value then the parte of ꝯ other, during the lines of the husbandes, the partition shalbe in his force and strength, yet after the death of the husbande the wife that hath ꝯ lesse part may enter in her sisters part as it is aforesaid, and defete the partition, but 257
if the partition so made betweene them were such, that euery part at the time of allottemēt were egal of yerely value, then it may not after be defeated in such cases.

¶ Also, if there be two parceners & ꝯ yonger 258
of them bee within the age of xxi. yeres, and partition is made betweene them, so that the

part that is allotted to the yonger, is lesse in
value then the part of the other. In this case
the yonger during the time of her nonage, &
also when shee cõmeth to ful age of xxj. yeres,
may enter in the porcion to her sister allotted,
&c. and defeate the partition, but such a parce-
ner ought to take heede whẽ she commeth to
ful age, that she ne take to her owne vse, al ỹ
profites of the tenemẽts to her allotted, for by
that shee agreeth to the partition at such age,
in which case the partition shal stande and a-
bide in his force and strength &c. but peraũ-
ture the profits of the halfe she may take, lea-
ving the profits of the other halfe, to her sister
255 &c. It is to weete, that when it is said males
and females be of full age, that shalbe vnder-
standed of the age of xxi. yere, for if any feoffe-
ment or graunt, release, confirmation, obliga-
tyon, or any other writinge before any such
age bee made by any of them &c. or that any
within suche age bee baptised or receiued with
anye man &c. all serueth for nought and maye
bee auoided. Also a man before such age shall
256 not bee sworne in no iurye nor no inquisition
260 Also if tenementes be geeuen to a man in the
tayle which hath as much lande in fee sim-
ple, and hath issue two daughters & dieth, and
the daughters, make partition betweene them,
so that the lands in fee simple be allotted to ỹ
younger daughter in allowaunce of the tene-
ments tayled, allotted to the elder daughter,
if after such partition the yõger daughter a-

lieneth

ſpeneth the lãd in fee ſimple to an other in fee, and hath iſſue a ſonne or a daughter & dyeth, the iſſue may enter in the tenements tayled, & them holde in purparte with their Aunt, and this is for two cauſes, one is for that, that the iſſue may haue no remedy of the land aſpened by his mother, for that the lande was to her in fee ſimple, and in ſo much as hee is one of ỹ heires in the taile, & hath nothing recompenced of that, that to him belongeth of the tenemẽts tayled, it is reaſon that he haue his purparte, of the lande in taile, and namely when ſuch partition maketh no diſcontinuãce of the taile, as ſhalbe ſaid hereafter in ỹ Chapiter of Diſcontinuance. But the contrary is holden M. 10 H. 6. that is to ſay, that they may not enter vpon the parcener ỹ hath his land tayled, but is put to ſue his writ of Formedon.

An other cauſe is, for that, ỹ it ſhalbe counted the folly of the elder ſiſter, that ſhee would agree to the partition where ſhee might haue had halfe the land in fee ſimple, and halfe of ỹ tenements in the tayle for purparte, and ſo to bee ſure without dãmage &c. Alſo if a man ſeiſed in a ploughe lande by iuſt title, dyſſeyſeth an infant within age of another ploughe lande, and hath iſſue two daughters, and dyeth ſeyſed of both thoſe plough lands, the enfant then beinge within age, & the daughters enter & make partition, & the one plough land is allotted for ỹ purparty of the one, as percaſe to the yonger ſiſter in allowance of the other

261

262

plough

plough land which is allotted to the purparte of the other, so that after the infant entreth in the ploughe lande of the which hee was disseised vppon the possession of the parcener that hath the same ploughe lande, then the same parcener may ēter into the other plough lande that the sister hath and holdeth in parcenary with her, but if the yonger sister alien the same plough lande to an other in fee simple before the entre of the enfant, and after the childe entreth vppon the possession of the alienee, then shee maye not enter into the other ploughe lande, for this that by her alienation shee hath vtterlye dismissed her selfe to haue any part of the tenementes as parcener, but if the yonger sister before the entre of the enfaunt make thereof a lease for terme of yeres, or for terme of life, or in fee taile, saving the reuersion to her, and after the childe entreth, there peraduenture it is otherwise, for this that she dismisseth not her selfe of all that. ꝑ was in her, but hath reserued to her the reuersion & the fee simple &c.

263 ¶ Also, if there bee three or fower parceners that make partition betwene them, if the part of the one parcener be defeated by such lawful entry, she may enter and occupy ꝑ other lands of all the other parceners, and compelle them to make new partition of ꝑ other landes betwene them &c.

264 ¶ Also, if there bee two parceners, and the one taketh an husbande, and the husbande and

the

the wife haue issue betwene them, & the wife dieth, and the husband holdeth him in ỹ halfe as tenaunt by the curtesie, In this case ỹ parcener ỹ survyueth, & the tenant by the curtesie may wel make partition betwene thē &c. And if the tenāt by curtesie will not agree to make partition, then the parcener ỹ survyueth, maye haue a writ de participatione facienda &c. and compel him to make partition. But if the tenant by ỹ curtesie will haue partition betwene thē, & ỹ parcener ỹ survyueth will not haue it, then ỹ tenant by the curtesie shal haue no remedy for to haue partitiō, for he may not haue a writ de participatione facienda, for this ỹ hee is not parcener, for such a writ lyeth for parceners al onely. And so may ye see ỹ the writ de participatione facienda lieth agaynst tenants by ỹ curtesie, & yet him selfe may not haue such a writ.

¶ Parceners by the custome.

PArceners by the custome bee where a man seised in fee tayle of the lands or tenements that bee of the tenure called Gauelkind with in ỹ shire of Kent, & hath issues diuers sōnes and dieth, suche landes and tenementes shall discende to all the sonnes by the custome, and they euenly shall enherite and make partycion betweene them by the custome as females do, and a writ de participatione facienda lyeth in this case as betweene females, but it 265

it behoueth in the declaration to make mentiō of the custome. Also suche custome is in other places in Englād and also such custome is in Noꝛth wales.

266 ¶ Also there is an other particion that is of an other nature, and in an other fourme then any of the particions afoꝛesaide, as a man seised of certeine landes in fee simple hath issue two daughters, and the elder is maryed, and the father geueth parcell of the same landes to the husbande with his daughter in franke maryage, and dyeth seysed of the remenaunt the which remenaunt is of moꝛe greater value by yere then be the landes geuen in franke mariage.

267 ¶ In this case the husbande and the wyfe shall haue nothinge foꝛ their part of the sayde remenaunt, but if they will put in their landes geuen in franke mariage in hotchpot with the remenaunt of the lande with her sister, and yf they will not do so, then the yonger sister may occupy the same remenaunt, and take to her the profites onelye, and it semeth that this woꝛd hotchpot is in Englishe a pudding, foꝛ in such a pudding is commonlye put not one onelye thinge, but one thinge with an other, and foꝛ this it behoueth in suche case to put the landes geuen in franke mariage with the other landes in hotchpot yf the husbande and the wife will haue any thinge in the other remenāt &c. 268 This woꝛd hotchpot is but a terme of similitude. It is as much to say as to put the landes

landes geuen in franke mariage & other landes in fee simple &c. together, & this is to such entent to accompt the value of all the lands, that is to say, of ỹ lands geuen in frank mariage & the remnant that was not geuen, and then partition shalbe made in this fourme, that ensueth. As put case that a manne seyled of xxx. acres of lande in fee simple euerie acre in value xij. ō. by the yere, which hath issue 2. daughters, and the one is couert baron, & the father geueth x. acres of the xxx. acres to the husband with his daughter in franke mariage & dyeth seyled of the remnaunt, then the other syster shall enter in the remnaunt, that is to say, in the xx. acres, and shall occupie it to her owne vse, except the husband and the wife will put their x. acres, geuen to them in franke maryage with the other xx. acres in hotchpot, that is to saye, together, and then when the value is knowen of euery acre, that is to say, euerie acre is yerely worth xij. ō. then the partition shalbe made in such forme, that is to say, that the husbande and the wyfe shall haue aboue thr x. acres geuen to them in franke maryage v. acres in seueralte of the xx. acres, and the other sister shall haue the remenaunt. that is xv. acres of the xx. acres for her part, so that accomptinge the x. acres that the husbande and the wife had in franke mariage, and the other v acres of the xx. acres, the husbāde & the wife haue as much in yerely value as ỹ other sister hath, & so alway vpō such partition the landes 269

geuen

geeuen in franke mariage abyde to the donors or to the heires &c. after ꝑ forme of the gift &c. For if ꝑ other parcener should haue nothīg of this ꝑ is geuē in frākmariage, of this should follow an inconuenience & a thing against reason which the lawe will not suffer &c. and the cause why that lands geuen in frankmariage shalbe put in hotchpot is this, ꝑ when a man geueth lands and tenements in franke mariage with his daughter or with his other cosin, it is to be vnderstood by the lawe that such gift made by such wordes franke mariage, is an aduaūcement of his daughter or of his cosin, & namely when the donour & his heires shall not haue any rent or seruice of hym except fealtie vntil the fowerth degree be paſſed &c. and for such cause the lawe is that she shal haue nothinge of the other landes and tenementes dyscended to the other parceners &c. but if she wil put the teneūts geuen in frank mariage in hotchpot as is aforesaid, and if shee wil not put the lands geuen in frank mariage in hotchpot, then she shall haue nothinge in the remenāt, for this that it shalbe vnderstoode by the lawe that she is sufficiently aduaunced to which aduauncement shee agreeth & holdeth
270 her content, and the same lawe is in this matter betweene the donees in frank mariage and the other parceners as to put in hotchpot &c. the same lawe is betweene the heires of the donees in franke maryage and the parceners &c. if the donees in franke mariage die before

their

their auncesters, or before such partition &c. as to put in hotchpot &c. And note well that gifte in frank mariage was by the cõmon law before the statute of Westminster the seconde, and alway after to hath beene vsed and continued &c. 271.

Also such putting in hotchpot &c. is where lands or tenements that were geuen in frank mariage discend frõ the donour in franke mariage alonely, for if the landes discende to the daughters by ỹ father of the donour, or by the mother of the donour, or by ỹ brother of the donour or other auncesters, & not by the donour &c. there it is otherwise, for in such case she to whom such gift in franke mariage is made, shal haue her part as if no such gift in franke mariage had bene made, for this that she was not aduaunced by him &c. but by another. 272

Also, if a man seysed in xx. acres of lande euery acre of euen yerely value, hauing in issue two daughters as it is afore said, and deceaseth of this to the husbande of the daughter xb. acres in franke mariage, and dyeth seised in the other xb. acres, in this case that other syster shall haue the xb. acres so discended to her only, and the husbande and the wife shal not put in such case the xb. acres to him geuen in frãk mariage in hotchpot &c. for this that the tenements geuen to him in franke mariage bee of as good yeerely value as the other lands discended &c. 273

For

¶ For if the landes geuen in franke mariage were of as euen value as the remnaunt, or of more value, then in vaine and to none entent such landes geuen in franke mariage shalbee put in hotchpot &c. for this that she may haue nothing of the other landes descended &c. For if she should haue any parcel of the other lãds discended, then should she haue more in yerely value, then her sister &c. which the lawe will not &c. And as it is said in the cases aforesaid, of two daughters or two parceners, in ỹ same manner, and in lyke cases is, where there be no sisters, after that as the case and the mat-
274 ter is &c. And it is to wytte, that landes & tenements geuen in franke mariage, shall not be put in hotchpot, but with the lands discended in fee simple, for of landes discended in fee tayle, partition shalbe made as if no such gifte
275 in frank mariage had bene made. Also no lãds shalbe put in hotchpot with other, but landes that bee geuen in franke mariage al only. For if any woma̅ haue any other lãds or tenem̃ts by any other gift in the tayle, shee shall neuer put such land so geuen in hotchpot &c. but she shal haue the part of the remnaunt, discended &c. that is as much as the other parcener shall haue of the same remenant.

276 ¶ Also another partition may be made betwene parceners, that varieth from the partitions aforesayd, as if theer be three parceners, and the yongest would haue partition, and the other two would not, but will holde in par-

cena-

ctuary that, ỹ to thẽ be longeth without par-
tition. In this case if one part bee allotted in
seueraltie to the yonger sister after that that
she ought to haue then the other may hold the
residenaunt in parcenary & occupie in common
without partition if they will, & such partition
is good inough. And if after the elder & middle
parcener will make partitiõ betwixt them of
that that they held, they may well do so when
they please. But where partition shalbe made
by force of a writ de Participatione faciend' &c.
there otherwise it is, for there it behoueth that
euery parcener haue his part in seueraltie &c.
More shalbe said of parceners in the chapiter
of Iointenants, & also in the chapiter of Te-
nants in common.

¶ Iointenaunts.

IOintenants bee, as a man seyled of certaine 277
lands or tenements &c. and thereof hath en-
feoffed two, or three, or fower, or more, to haue
and to hold to them and to their heires, or to
haue and to holde to them for terme of their
liues or for terme of an others life, by force of
which feoffement they be seyled, such be iointe-
naunts.

¶ Also if two or three disseise another of any 278
lands or tenementes to their owne vse, then
the disseisours be iointenaunts. But if they
disseise another to the vse of one of them, then
bee they no iointenaunts, but he to whom the

279

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281

ose of the dissesin is made, is sole tenant, & the other haue nothing in the tenancy but bee called coadiutors to ỹ dissesin &c. And note wel ỹ dissesin is properly where a mā entreth into any lands or tenemēts where his entre is not lawful & putteth hī out ỹ hath the frāktenemēt &c. And it is to weete, ỹ the nature of iointenācy is, ỹ he that suruiueth shal haue onely the whole tenancy after such estate as he hath if the iointure be cōtinued &c. As if tȳ. iointenāts be in fee simple & ỹ one hath issu & dieth, yet they that suruiue shal haue the tenements whole, & the issue shall haue nothinge, & if the second iointenant haue issue & die, yet the third ỹ suruiueth shal haue the tenements whole, & shal haue them in fee simple to him & to hys heires, but otherwise it is of parceners. For if tȳ. parceners be, & before any partition, the one hath issue & dieth, ỹ that to her belongeth shal discēd to her issue, & if such a parcener die without issue, then that, that to her belongeth shall discēd to her heire, so that they shal haue thys by discent & not by the suruiuour as ioyntenaunces haue &c. And as the suruiuour holdeth place among iointenaunts &c. in the same maner yt holdeth place amōg them that haue ioynt estate or possession with other of chatels real, or chatels personal. As if a lease of landes or tenementes bee made to many for terme of peres, he that suruiueth of the lessees shal haue the tenements whole to him during the terme by force of the same lease. And yf

any

any horſe, or other chattel perſonal be geuen to many mo, he that ſuruiueth ſhal haue them to him ſelfe.

¶ In the ſame maner it is of dets & duties &c. For if an obligation be made to many for one duty, he ẏ ſuruiueth ſhal haue al the debt, & ſo it is of al other couenants & contracts. 282

¶ Alſo ſome ioyntenauntes may bee that may haue ioynt eſtates and bee iointenauntes for terme of their lyues, and yet they haue ſeueral inheritaunces. As if landes bee geuen to two menne and to the heires of their two bodies engendred. In this caſe the donees haue ioint eſtate for terme of their two liues and they haue ſeueral inheritaunce. For if the one of the donees haue iſſue and die, the other that ſuruiueth ſhall haue al by the ſuruiuour for terme of hys life. And if he that ſuruyueth hath alſo iſſue, and die, then the iſſue of the one ſhal haue the halfe of the lande, and the iſſue of the other ſhal haue the other halfe of the lande, and they ſhall holde the land betwene them in commune, and bee not ioyntenauntes but tenauntes in commune. And the cauſe that ſuch donees in ſuch caſes haue ioynt eſtate for terme of their liues, is thys, for this, that at the beginninge landes were geuen to them two, which wordes wythout more ſaying, made a ioint eſtate to thē for tēme of their liues. For if a mā wil let lād to another by deede or wout deede, not making mēciō what eſtate he hath, & of this maketh liuery of 283

note albeit they haue severall inheritances in taile & particular estate for their lives yet the inheritance doth not [illegible] & for [illegible] ye ioyntenancy but they are ioyntenants for life & tenants in comon of the inheritance in taile

if a man make a lease for life & after graunteth ye reversion to ye tent for life & to a stranger to their heires they are not ioyntents of ye reversion but the reversion is by act of lawe severed for there moytie of ye tent for life & for ye other moytie hee holdeth it still for life ye reversion of yt moytie to ye grantees 19 H. 6. 2. b.

H.ij.

here is a doubt whether that if landes are given to 2 women & to ye heires of their 2 bodies begotten that ye husband havinge issue should bee tent by ye curtesie livinge ye other sister, for ye [illegible] hold the inheritance was severed & ye sisters were tents in common in possession and consequently the husband to be tent by ye curtesie wch he could not be if ye women had a ioynt estate for terme of their lives 44. E. 3. tail. 13

rye of leyſin. In this caſe the leſſee ſhal haue eſtate for terme of his lyfe, and ſo in ſo much that the lands were geuen to them, they haue a ioint eſtate for terme of their lyues: and the cauſe why they haue ſeuerall inheritaunce is this, in ſo much that they cannot by poſſibilitie haue an heire betweene them ingendred as a man and a woman may haue &c. the law will that their eſtate and their inheritaunce ſhalbe ſuch as reaſon will after the fourme and effecte of the wordes of the gyft, and that is to the heires that the one engendreth of hys body by any of his wiues, and the heires that the other engendreth of his body by any of his wiues &c. So it behoueth by neceſſitie of reaſon, that they ſhal haue ſeuerall inheritaunce. And in ſuch caſe, if the iſſue of one of the donees after the death of the donees die, ſo that hee hath no iſſue alyue of his bodie engendred, then the donour or his heires may enter in the halfe as in his reuerſion, though ỹ other of the donees hath iſſue alyue &c. And ỹ cauſe is for ſo much as the inheritaunce is ſeuered &c. the reuerſion in the law is ſeuered &c. and the ſurmiuour of the iſſues of the other ſhall holde no
274 place to haue the whole, & ſo as it is ſayd of males, in the ſame maner it is where lande is geuen to two females & to the heires of their two bodies begotten.

285 ¶ Alſo if landes be geuen to two females & to the heires of one of them, thys ys a good ioinʒture, and the one hath a freeholde, and the other

other hath fee ſimple, & if ſhe ÿ hath ÿ fee die, ſhe ÿ hath ÿ free hold ſhall haue the whole by the ſuruiuor for terme of life. In ÿ ſame maner it is where tẽts be geuen to two, & to the heires of the body of one of them engendred, the one hath free hold, & ÿ other fee tayle. Alſo 286
ſo if two iointenants be ſeyſed of eſtate of fee ſimple, and the one grãteth a rent charge by hys deede to another out of that that to hym belongeth &c. In this caſe duringe the life of the grauntour, the rent charge is effectual. But after his deceaſe, the rent charge is void as to charge the land, for he that hath the land by the ſuruiuour, ſhal hold al the land diſcharged. And ÿ cauſe is for this, that hee that ſuruiueth clayneth to haue the land by the ſuruiuour &c. and not by diſcent of his felow &c. But otherwiſe it is of parceners, for if there bee two parceners of tenements in fee ſimple, & before any particion, the one chargeth, that that to him belongeth by his deede, of a rent charge &c. & dieth without iſſue, & that that to him belongeth, diſcendeth to the other parcener: In this caſe the other parcener ſhal hold the land charged &c. for this that he cõmeth to the halfe by diſcent as heire &c.

¶ Alſo if there bee two iointenauntes in fee ſimple within one borough where the landes and tenements within the ſame borough bee deuyſable by teſtament, if the one of the ſayde iointenauntes deuyſe that that to him belongeth by teſtament &c. and dye, this deuyſe is 287

two feme joyntenants of a lease for yeares one of them taketh husband & dieth yet the longer shall survive for though all chattels reall are given to the husband if hee survive yet ye survivor betweene ye joyntenants is ye elder title & after ye marriage ye feme continued sole possessor for if ye husband dieth ye feme shall have it & not ye executors of ye husband but otherwise it is of personall goods

voide. And the cause is for this ꝑ no deuyse may take effect but after the death of the deuisour. And for this ꝑ by his death all the lande incontinent commeth by ꝑ lawe to his felow ꝑ survyueth, by the survivour, which neyther claimeth nor hath nothing in the land by the deuise, but in his owen right by ꝑ survivor after the course of ꝑ lawe &c. for this cause such deuise is voide.

¶ But otherwise it is of parceners seysed of tenementes deuisable in suche case of deuyse,

188 &c. Causa qua supra. Also it is commonly saide ꝑ euerye iointenant is seised of the lande that he holdeth iointly &c. throughout and by all. And this is as much to say, that hee is seised by euery parcel, and by al &c. and this is true, for in euery parcel, and by eche parcel, & by all the landes and tenements he is iointly seysed with his felowes &c.

189 ¶ And if two iointenants be seised of certein landes in fee simple, and the one letteth that, that to him belongeth to a straūger for terme of forty yeres, and dieth within the terme. In this case after his decease the lessee may enter and occupy the halfe to him letten during the terme &c. though the lessee neuer had possessiō of it in the life of the lessour, by force of ꝑ lease &c. And the diuersitie betweene the case of the graūt of a rent charge & this case, is this. For in the graunt of a rent charge by a iointenant, the tenants abide alway as they were before without that, that any hath any right to haue

parcel

parcel of the tenemēts but himſelfe, & the tenements abide in ſuch plyte as they were before the charge &c. But where a leaſe is made by a iointenant to another for terme of yeres &c. incontinent by force of the leaſe the leſſee hath right in the ſame lād, that is to ſay, of al that, ỹ to his leſſour belonged, & to haue ỹ by force of the ſame leaſe during his terme &c. & this is the diuerſitie &c.

¶ Alſo, iointenāts if they wil, may make particion betwene thē, & the particion is good ynough, but they ſhal not be cōpelled by ỹ law to do it, but if they will make particiō of their proper wil and agreement, the particion ſhall ſtand in his ſtrength. P. 3. E. 4. 290

Joyntenants are now compellable to make partition by the ſtatutes of 31 & 32 H. 8. ca. 32

291 ¶ Alſo, if a ioynt eſtate bee made of lande to the huſbande and the wife, and to a thirde perſon, in thys caſe the huſband and the wife haue not in the lawe in their right but ỹ halfe &c. And the thirde perſon ſhall haue as much as the huſbande and the wife haue, that is to ſay, the other halfe &c. And the cauſe is, for that the huſband and the wife be but one perſon in the lawe, & be in like caſe as if eſtate be made to two iointenants, where ech one hath by force of ỹ iointure the one halfe, & the other ỹ other half. In ỹ ſāe maner is it where an eſtate is made to ỹ huſbād & ỹ wife & to other two menne, in this caſe the huſbande and the wyfe haue not but the thirde parte, and ỹ other two mē ỹ other two parts &c. Cauſa qua ſupra. More ſhalbee ſayde of them touchinge

iointenancy in ỹ chapter of tenants in cõmon, tenant per Elegit, & tenant by eſtat marchant.

¶ Tenants in common.

292 TEnauntes in common, bee they that haue landes & tenements in fee ſimple, fee taile, or for terme of lyfe &c. whiche haue ſuche landes and tenements by ſeuerall title, and not ioynt title, and none of them knowe that, that is ſeuerall to him. But they ought by the lawe to occupie ſuche landes and tenementes in common, and vndeuyded to take the profites in common, And becauſe that they come to ſuch landes and tenementes by ſeuerall titles, and not by one ſeiſe ioynt title, and their occupation & poſſeſſion ſhalbe by the lawe among them in cõmon, therefore they be called tenaunts in common: as if a man enfeoffe two iointenãts in fee, and the one of them alyeneth that that to him belongeth to another in fee, nowe the other ioyntenant and the alyenee be tenantes in commõ, for this that they be ſeyſed in ſuch tenementes by ſeuerall tytles, for the alienee commeth vnto the halfe by the feoffement of thone ioyntenaunt, and the other iointenant hath the other halfe by force of the firſt feoffement made to hym and to his firſt fellowe: and ſo they bee in by ſeuerall tytles, and by
293 ſeuerall feoffementes &c. And it is to weete, that when it is ſaid in any booke, that a man is ſeyſed in fee, without more ſaying, it ſhalbee

vnder

vnderstoode fee simple, for it shall not bee vnderstoode by such word in fee, that a mā is seised in fee taile, except that there be put thereto such addition, that is to say, fee taile.

294 ¶ Also, if three iointenaunts bee, and the one of them alieneth that, that to him belongeth to another in fee. In this case ỹ alienee is tenaunt in common with the other two iointenaunters. But yet the other two iointenants be seysed of the two parties iointly, & of those two partes the survivour betweene thē holdeth place &c.

295 ¶ Also, if there bee two iointenauntes in fee, and the one geueth that, that vnto hym belongeth to another in the tayle, the donee and the other iointenauntes be tenantes in cōmon &c. But if the landes be geeuen to two men & 296 to the heires of their two bodyes engendred, the donees haue ioint estate for terme of their lyues: and if eche of them haue issue and dye, their issues shall holde in common &c. But if landes bee geuen to two Abbottes, as to the Abbot of Westminster & to the Abbot of S. Albons, to haue and to holde to them and to their successours, in this case they haue incontinent at the beginninge, estate in common, and not ioynt estate. And the cause is for this, that euery Abbot or other soueraigne of an house of religion before that he be made Abbot or soueraigne, was but a dead man in the lawe. And when he is made Abbot, he is as a mā personable in ỹ lawe, al onely to purchase

chase, and to haue landes and tenements and other thinges to the vse of hys house and not to his owne proper vse. as other secular men may. And for this in the beginninge of their purchase, they be tenauntes in commen. And if the one of them dye, the Abbot that succedeth shall not haue al by the survivour, but ꝑ successour of ꝑ abbot that dyeth shal hold the halfe in common with the Abbot that survyueth &c.

297 ¶ Also if lands be geuen to an Abbot & to a secular man, to haue & to hold to them, ꝑ is to say, to the Abbot & his successors, & to the secular mā, to him & to his heires, they haue estate in common, Causa qua supra.

298 ¶ Also if lands be geuen to two mē to haue & to hold ꝑ one halfe to the one & to his heirs, & the other halfe to the other & to his heires, they be tenants in common &c.

299 ¶ Also, if a man seised of certeine landes enfeoffeth another in the halfe of the same lande without any speach of assignement or limitation of ꝑ same halfe in severaltie at ꝑ time of ꝑ feoffement, then the feoffee & the feoffor shall

300 hold ꝑ partes of the land in common. And in ꝑ same maner as is aforesaid of tenāts in cōmon, of lands or tenemēts in fee simple or fee taile, in the same maner may it be said of tenants for terme of life. As if two ioyntenāts be in fee, & the one letteth to a man that, ꝑ unto him belongeth for terme of life, and the other iointenaunt letteth that, that to him belongeth

longeth to another for terme of life, these two lessees bee tenaunts in common for terme of their lives &c.

¶ Also if a mā let lāds to ij, men for terme of their lives, & ꝑ one graunteth al his estate of that, ꝑ vnto him belongeth to another &c. thē ꝑ other tenant for terme of life, & he to whom the graunt is made, be tenaunts in cōmon during the time ꝑ both lessees be alive. 301

¶ And it is to be remembred, that in al other such cases though that they bee not heare expressly named or specified, if they be in like reason, they be in like lawe. 302

¶ Also, if there be two iointenāts in fee, and the one letteth that, ꝑ vnto hym belongeth to another for terme of life, ꝑ tenāt for terme of lyfe, during his life, & ꝑ other iointenant that did not let, be tenants in common. And vpon this case a question maye ryse, as this. Put the case ꝑ the lessour hath issue & dieth, iiunge the other iointenant his felow, & iyuing ꝑ tenant for terme of life, the questiō may be such, if the reuersion of ꝑ halfe &c. ꝑ the lessor hath, shal discend to ꝑ issue of ꝑ lessour, or ꝑ ꝑ other iointenāt shal haue it by ꝑ suruiuor. And sōe haue said in this case, ꝑ the other iointenaunt shall haue the reuersion by the suruiuour, and their reason is such, whē the iointenāts were iointly seised in fee simple &c. though the one of thē made estate of ꝑ, ꝑ vnto him belongeth for terme of life, & though that he hath severed ꝑ franktenemēt of that, ꝑ vnto him belōgeth

by

by ꝑ leale, yet he hath not seuered the fee simple. But the fee simple abydeth to him iointly as it was before. And so it seemeth vnto thē that the other iointenant that suruiueth, shall haue the reuersion by the suruiuour ꝛc. And other haue said the contrary, and this is their reason, when one of the iointenauntes letteth this that to him belōgeth to an other for terme of his lyfe, that by suche leale the franktenement is seuered from the iointure. And by the same reason the reuersion that is dependaunt vnto the same franktenement, is seuered from the ioynture. Also, if the lessour had reserued to him a yearely rent vppon the leale, the lessour onely shoulde haue had the rent ꝛc. The which is a proofe that the reuersion is onelye in him, and that the other hath nothing in the reuersion ꝛc. Also if the tenaunt for terme of life were impleaded ꝛc. and made defaut after defaut, then the lessour shalbee onelye of thys receyued to defende his right, and hys felowe in this case in no manner shalbee receyued: which proueth that the reuersion of the halfe is onelye in the lessour. And so by cōsequens, if the lessour dye lyuinge the lessee for terme of lyfe, the reuersion shall discende to the heires of the lessour ꝛc. and not come to the other ioyntenaunt by the suruiuour. Ideo quære But in this case if the iointenāt that hath the franktenement haue issue and dye, lyuing the lessour and the lessee, then it seemeth that ꝑ issue shall haue the halfe in hys demesne as of

fee

fee by diſcent, for this that the frankētenement may not by nature of the iointure bee annexed to a reuerſion &c. And it is certein that he that ſeſſeth, was ſeyſed of the halfe in his demeſne as of fee, & none ſhal haue any iointure in hys frankētenement. Ergo this ſhal diſcend to his iſſue. Sed quęre. But if it be thus, yͭ the lawe in this caſe is ſuch, yͭ if the leſſour die lyuinge the leſſee, & lyuinge the other iointenaunt that hath the frankētenement of the other halfe, that the reuerſion ſhall deſcende to the iſſue of the leſſour, then is the iointure & the title that any of thẽ may haue by the ſuruiuour by the right of the iointure, adnulled & al vtterly defeated for euer. 303

In the ſame maner it is if the iointenãt yͭ hath the frankētenement die, lyuing the leſſour & the leſſee, if the law be ſuch that his frankētenement & fee that he hath in the halfe ſhal diſcend to his iſſue, then the iointure ſhalbe defeated for euer &c.

Alſo if three iointenants bee, & the one releaſeth by his deede to one of his felowes al yͭ right that he hath in yͤ lãd, thẽ hath he to whõ the releaſe is made, the third part of the lands by force of the releaſe, & he and his felow ſhall hold the other ij. partes iointly. And as to the third part yͭ he hath by force of the releaſe, he holdeth the third part with him ſelfe, & his felowe in common.

And it is to wit that ſometime a deede of releaſe ſhal take effect and ſhall bee in vre to put

304 ~~A~~ this doth enure by way of mitter l'estate & not by way of extinguishment for yf yͤ release should enure to his companion alsoe & he is in yͤ per by him that maketh yͤ release but if he ha[d] 305 release to the other 2 yet he had it were not by pur but in supposition

of lawe for many purposes they to whom yͤ release made shalbe supposed in from yͤ first feoffor as they shall deraigne yͤ first warranty &c yͤ whole

a release may enure 4 manner of waies 1 by way of mitter l'estate 2 by way of mitter le droit 3 by way of extinguishment 4 by way of creation or enlargement of the estate

put the estate of him ꝑ made ꝑ release, to him to whom the release is made, as in the case before seyd.

¶ And also if a ioint estate be made to ꝑ husband and his wife, and to a third parson, and the third person releaseth his right ꝑ he hath &c. to the husband, then hath the husband the halfe that the thirde parson had, and the wife of this hath nothinge. And if in such case the thirde release &c. to the wife not naminge the husband in the release, then hath the wife the halfe that the thirde parson had. And the husband hath nothing of this, but in right of hys wife, for this that in such case the release shall enure to put the estate to him to whom the release is made of all that, that belonged to him
306 that made ꝑ release, and in some case a release shal enure to put al ꝑ right that he hath that made the release, to him, to whom the release is made. As a manne seysed of certayne landes and tenementes, is disseysed by two disseysours, if the disseysee by his deede release all hys ryght &c. to one of the disseisours, then he to whom the release is made, shall haue and holde all the tenementes to hym onelye, and put his fellowe out of euerie occupation of it. And the cause is, for this that the two disseysours were seysed in the tenementes by wrong by them done against the lawe. And when one of them hath the release of him that had right to enter &c. thys right in such case resteth in him to whom the

release

releale is made, and in such plight as if hee that had the right had entred & enfeoffed him &c. And the cause is for this, that he that before had an estate by wrong, that is to say. by disseisin. now by the releale hath a rightful estate.

307 ¶ And in some case a releale shall enure by way of extinguishmēt, & in such case such releale shal help the iointenant to whom the releale was not made, as wel as him to whom the releas is made. As if a man bee disseysed, & ỹ disseisour maketh a feoffemēt to ỹ. men in fee, if the disseisie releale to one of the feoffees in fee by his deede, thē such releas shal ēure to both the feoffees, for this that ỹ feoffees haue estate by the law, ỹ is to say, by the feoffemēt and not by wrong done to any other.

308 And in the samē maner it is, if the disseysor make a leale to a manne for terme of lyfe, the remainder ouer to another in fee, if the disseisy releale to the tenaust for terme of lyfe all his right &c. This releale enureth as wel to him in ỹ remainder, as to ỹ tenant for terme of life &c. And the cause is for this, ỹ tenāt for terme of life cōmeth to his estate by the course of the law. And for this the releale shal ēure & take effect by way of extinguishment of the right of him ỹ hath released &c. And by this releale the tenant for terme of life hath no greater estate then he had before the releale made vnto him, & the right of him that released is al vterlye extincte. And in so much that such releale

releasse cannot enlarge the state of the tenaunt for terme of lyfe, it is reason that the releasse shall enure to him in the remainder &c. Whom that be sayd of releasses in the Chapiter of releasse.

309 ¶ Also if there be two parceners, and the one alieneth that ꝑ vnto him belõgeth to another, then the other parcener and the alienee be tenants in common.

310 ¶ Also tenants in common may bee by title of prescription, if the one and his auncestors, or they whose estate he hath in the halfe, haue holden in common, the same halfe with the other tenãt that hath the other halfe, and with his auncestors or them whose estate hee hath as vndetuided, from time whereof no memory renneth. And diuers other matters may make cause men to be tenants in commun that be not here expressed.

311 ¶ Also, in some case tenãts in commõ ought to haue of their possession seueral actions, and in some cases they shal ioine in one actiõ. For if there be two tenaunts in common, and they bee dissessed, they ought to haue against the dissessour two assises, & not one assise, for euerie of them ought to haue an assise of his halfe &c. & the cause is for this, ꝑ tenãts in common were seysed by seueral titles, but otherwise it is of iointenaunts. For if there bee iii. iointenaunts & they be dissessed, they shall haue in all their names but one assise, because that they had but one ioint title.

¶ Also

Also if there bee three ioyntenauntes and one releaseth to one of his fellowes all the ryght that he hath, and after the other two be disseised of the whole &c. in this case the other shall haue 4. veral assises in this forme, ℣ is to say, they shall haue in both their names one assise of the two partes &c. for this that they held the two partes ioyntlie at the tyme of the disseisin. And as to the thirde parte, hee to whom the release was made, ought to haue thereof an assise in his owne name, for this ℣ as to the thirde part he is tenant in common &c. for this that hee came to the thirde part by force of the release, ℣ not onely by force of the ioynture. 312

Also as to sue actions that touche the realtie, there is diuersitie betwene parceners that bee in by diuers discentes, and tenauntes in common. For if a man seised of certayne landes in fee haue issue two daughters and die, and they enter &c. and eche of them hath issue a sonne & dieth without partition made betwene them, by which the one halfe discendeth to the sonne of the one parcener, and the other halfe discendeth, to the sonne of the other parcener, and they enter and occupie in common & be disseised in this case they shall haue in their two names one assise and not two assises. And the cause is, that though they come in by diuers discents &c. yet they be parceners & a writ de participatione facienda lieth betwene thē. And they be not parceners hauing regard 313

or respect onely to the seysin and possession of their mothers, but they be parceners hauinge more respect to their estate that discended from their grandfather to their mothers. For they may not bee parceners where their mothers were not parceners before &c.

¶ And so to such respect and consideration, that is to witte, as to the first discent that was to their mothers they haue a tytle in parcenary, the which maketh them parceners. And also they be but as one heire to their cõmon ancester that is to say, to their graundfather from whõ the lãd discẽded to their mothers. And for these causes before partition betwene them &c. they shoulde haue one allyle though they come in by seueral discentes &c.

314 ¶ Also if there bee two tenaunts in common of certaine landes in fee, & they gene the same lãde to another man in the tayle, or let it to another man for terme of lyfe, yelding an annuitie or certaine rent, and a pound of pepper or an hauke, or an horse, and they bene seyled of these seruices & after all the rent is behynde, and they distraine for it, and the tenaunt maketh them rescous.

¶ In that case as to the rent and the pound of pepper, they shall haue two allies, and as to the hawke and the horse but one allie, and the cause why they haue two allyes as to the rent and pounde of pepper is thys. in so much that they were tenauntes in commonby seuerall tytles, and when they made

made a gift in the tayle or leafe for terme of lyfe &c. fauing to thē ỹ reuerſion, & yelding to them certaine rent &c. Such reſeruation is in dent to their reuerſion.

¶ And for this ỹ their reuerſion is in common and by ſeuerall titles, as their poſſeſſion was before the rent, and other thinges that may be ſeuered and were to thē reſerued vpon the gift or vppon the leafe which be incident by the law to the reuerſion, ſuch thinges ſo ſeuered were of the nature of the reuerſion, which reuerſion is to them in common by ſeuerall titles. And it behoueth that the rent of the pound of pepper which may be ſeuered be to them in common by ſeuerall titles. And of this they ſhall haue two aſſiſes, and euery of them in his aſſiſe ſhal make his plaint of the halfe of the rent and of the halfe of the pound of pepper &c.

¶ But of the hawke and the horſe which cā not be ſeuered, they ſhall haue but one aſſiſe. For a mā may not make a plaint in aſſiſe of ỹ halfe of an hawke or of ỹ halfe of an horſe &c. In the ſame manner it is of other rentes and ſeruices that tenants in cōmon haue in groſſe by diuers titles.

¶ Alſo as to actions perſonels, tenauntes 315
in common ought to haue ſuch actions perſonels iointly in all their names, that is to ſay, of Treſpas, or of offences that touche their tenementes in common. As of breakinge of their houſes, breakinge of their cloſes, and

pastures, washing & defoulding of their grasse, cuttinge of their wood, and to fishe in their ponds, & such other. In this case tenaunts in cõmon shall haue one action iointly & recouer iointly dãmages, because that the action is in the personaltie and not in the realty.

316 ¶ Also if two tenaunts in common make a lease of their two tenementes to another for terme of yeres yelding vnto them yerely a certaine rent, if the rent be behynde &c. the tenãts shall haue one action of debt against the lesse and not diuers actions, for that the action is in the personalty.

318 ¶ Also tenaunts in common may make partition betweene them yf they will, though they shall not bee compelled by the lawe. But if they make partition betweene them by their agreement and assent, such partition is good ynough, as it is adiudged in ỹ booke of assises, 9.3 E.4.

319 ¶ Also as there be tenauntes in common of lands or tenements &c. as is aforesaid. In the same manner there bee tenauntes in common of chattels reall and chattels personall. As yf a lease bee made of certaine lands to two men for terme of xx. yeres, & when they bee thereof possessed, the one of the lessees graunteth that, ỹ vnto him belongeth before the terme to another, than he to whõ the graunt is made & the other, shal hold & occupy in common.

320 ¶ Also if two iointenauntes haue the ward of the bodye & of the landes of a childe within age.

age, and the one of them graũteth to another that, that vnto him belõgeth of ꝑ same ward, then the graũtee and the other that graũteth not, shal haue and hold it in commen ꝛc.

¶ In the same maner it is of chatels perso- 321
nals, as if twoe haue a ioynt estate by gift or by buying of an hors or an Oxe ꝛc. the one of them graunteth that, that to him belongeth of the same horse or oxe ꝛc. Then the graũtee & hee that graunted not, shall haue and possesse such chattell personall in common ꝛc. And in such cases where diuers persons haue chatels reals or personals in cõmon and by diuers titles, if the one of them die, the other that suruiueth, shall not haue that by the suruiuour, But the executours of him that dyeth shall holde and occupie that with him ꝑ suruiueth as their testatour did or ought in his lyfe, ꝛc. for this that their titles and right in this case were seuerall.

¶ Also in thys case aforesayde, if two haue 322
estate in common for terme of yeres, & the one occupy al and put the other out of his possession and occupation, Then shal he that is put out of occupation haue agaynst the other a writte de Iectione firme for the halfe agaynst the other. In the same maner it is where two 323
holde the warde of landes or tenementes during the nonage of a childe, if one put out the other of his possession, he that is out, shal haue a writte of Iectment de garde of the halfe for this that those thinges bee chattels reals,

and may be apporcioned and seuered &c. But no such accion of trespas, ꝑ is to say. Quare clausum suum fregit & herbam suam conculcauit et consumpsit &c. And such like accions the one may not haue against the other, for this that eche of them maye enter and occuppye in common &c. throughout & by all the tenementes which they holde in common. But if two be possessed of chatels personels in cōmon by diuers titles, as of an horse, or an ore, or a bowe if the one take it all to hymselfe out of ꝑ possession of the other, the other hath none other remedy but to take this of him that hath done to him the wrong for to occuppye in common when he may see his time.

¶ In the same maner it is of chatels real that may not be seuered, as the case aforesayd two be possessioners of a ward of the body of a childe within age, if one take the childe out of the possession of the other, the other hath no remedy by any accion by the lawe, but to take the childe out of the others possessiō when he seeth his time &c.

324 ¶ Also when a man in pleading will shewe a deede of feoffement made vnto hym, or a gyft in the tayle, or a lease for terme of lyfe of any landes or tenementes, there hee shall saye by force of which feffement, gift, or lease, hee was seised &c.

324 But where a mā wil plede a lease or a grāt made vnto him of a chatel real or psonel, there he shal say by force of which he was possessed

More

Whoze shalbe saide of tenauntes in commen in ỹ Chapter of Releales, Cõfirmatiõs, & Tenants per Elegit.

Estates vpon condition.

EStates ỹ men haue in landes oz tenemẽts be in two maner. That is to say, they haue estate vpon condition in dede, oz vppon condition in lawe. Upon condition in dede, is as a man by dede indẽted enfeoffeth another in fee reseruing to him & to his heires yerely a certein rẽt, paiable at one feast oz at diuers feastes by yere, vpon condition ỹ if the rẽt be behinde &c. ỹ it shalbe lawful to the feoffour & to hys heires to enter into the lands oz tenemẽts &c. 325

Oz if the lande bee aliened to another in fee, to yelde vnto him certeine rent &c. And yf it hap that the rent be behinde by a weeke after any day of paimẽt of it, oz by a moneth, oz by a halfe yere after any day of payment, that then it shalbe lawful to the feoffour and to his heires to enter &c.

In this case if the rent bee not payed at such a time oz before suche a time limitted and specified within ỹ condition compryzed in the indẽture, thẽ may ỹ feoffoz oz his heires enter into such landes oz tenementes, & them in his first estate to haue and to holde, and of thys to put the feoffee cleane oute, and it is called estate vppon condition, foz thys that the

estate of the feoffee is defeyzible if the cõdition be not performed.

326 ¶ In the same manner it is if landes be geuen in the taile, or let for terme of lyfe, or for terme of yeres, vppon such condition &c. What

327 where a feoffement is made of certeine landes reseruing certeine rent vppon such condityon ꝑ if the rent be behinde, that it shalbee lawefull to the feoffour and his heires to enter, and the lande to holde tyll they bee satisfyed or payed of their rent behinde &c. In thys case if the rent be behind and the feoffour and hys heires enter, the feoffee is not excluded cleane out. But the feoffour shall haue and holde the lande, and take the profits tyll that hee be satisfied of the rent behinde &c. And when he is satisfied, the feoffee may reẽter in ꝑ same land and holde it as he dyd before, for in suche case ꝑ feoffour shall haue it, but in maner for a distresse in the meane time, till he be satisfied of the rent &c. though hee take the profites in the meane time.

325 ¶ Also, dyuers wordes among other there be that by vertue of themselfe make estate vpõ condition. One is this worde of condition, as A. enfeoffeth B. of certeine lande, to haue and to holde to the same B. and his heires vpon conditiõ that the same B. and his heires shall pay or do to be payed to the foresaide A. and to his heires yerely such rẽt &c. In these cases without any more saying the feoffee hath es-

320 tate vpon condition. Also, if the cõdition were

such

ſuche: Prouided alwaye that the aforeſaid B. pay or do to be payed to the aforeſaid A. ſuche rent. Or if they were thus, ſo ỹ the aforeſaid B. pay or do to bee payed ſuch rent. In theſe caſes without any more ſaying, ỹ feoffee hath eſtate but vpon condition, ſo ỹ if he performe not the condition, the feoffour and his heires may enter &c.

¶ Alſo, other wordes there be in a deede that 330
raiſeth the tenementes to be conditionelis, as vpon ſuche a feoffement a rent is reſerued to the feoffour &c. & after it is put in ỹ deede that if it chaunce the aforeſaide rent to bee behinde in part or in all &c. that then it ſhalbe lawful to the feoffour and to his heires to enter. And this is a dede vpon a condition. But there is 331
diuerſitie betweene the wordes (if it chaunce.) &c. and the wordes next aforeſayde. For thys worde (if it chaunce) &c. is nought worth to ſuch condition, but if it haue theſe wordes following, that is to ſay, that it ſhalbe lawful to the feoffour and to hys heirds to enter &c. But in theſe caſes aforeſaide, it needeth not by the lawe to put ſuche clauſe, that is to ſay, that the feoffour and hys heires may enter &c. for thys that they maye ſo doe by force of the wordes aforeſayde, becauſe they conteyne in them ſelfe in the lawe a condytion, that is to ſaye, that the feoffour and hys heires maye enter. Yet it is common in all ſuche caſes aforeſayde, to put ſuche clauſes in the deedes, that is to ſay, if the rent bee behinde

&c.

&c. that it shalbe lawfull to the same feoffour and his heires to enter &c. And this is well done to that intent for to declare and expresse to the lay men that be not learned in the law, the maner and the condition of the feoffement &c. As a man seised of lande as of franktenement, let the same land to another by dede indented for terme of yeres, yeldinge vnto hym certein rent, it is vsed to put in the deede ỹ yf the rent be behinde at the daye of payment by a moneth &c. That then it shalbe lawful to ỹ lessour to distraine &c. and yet the lessour may distraine of common right for the rent behind &c. though such wordes neuer were set in the deede &c.

332 ¶ Also if a feoffement bee made vppon such condition, that if the feoffour pay at a certayne day &c. xx. li. of money, that then the feoffour may enter &c. In this case the feoffee is called tenaunt in morgage, that is as much to saye in frenche as morgage, and in latin mortuum vadiū, and in Englishe a dead pledge. And it seemeth that the cause why it is called morgage, is ỹ it standeth in doubt if the feoffour will pay at the daye limitted, such a summe or not and if he pay not, then the land that is put in pledge vppon condition for the payment of the money, is gone frō him for euer, & so dead as to the tenant &c.

333 ¶ Also, as a man may make a feoffement in fee in morgage, so may a man make a gift of the tayle in morgage, and a lease for terme

of

of life, or for terme of yeares in mortgage. And al such tenants be tenants in mortgage after the state that they haue in the landes &c.

¶ Also, if a feoffement bee made in mortgage 334
vpon condition that the feoffour shall paye such a sume at such a day &c. as is betweene them by their deede endented accorded, and limitted, though the feoffour die before the day of payment &c. yet if the heire of the feoffour paye the same summe within the day to the feoffee, or profer him the money, and the feffee refuseth to receiue it, then maye the heire enter into the landes. And yet the condition is, if the feoffour pay such a summe at such a day &c. and not makinge mencion in the condytyon of any payment to bee made by his heire, but for this that ỹ heire hath interest of ryght in the condition &c. and the intent was but that the money shoulde bee payed at suche a day set &c. and the feoffee hath no more daimmage to bee payed by the heire, then though he were payed by the father &c. for this cause if the heire paye the money or tenderth the money at the day set &c. and the other refuseth it, he maye well enter. But if a straunger of his owne head that hath no interest &c. woulde tender and pay the money at the daye set, then the feoffee is not bounde to receyue it &c.

¶ And it is to be had in minde that in such 335
case where such lawfull tender of the money

is

is made, and the feoffee refuſeth to receyue it, wherefore the feoffour or his heires do enter &c. then the feoffee hath no remedy to haue the money by the common lawe, for this ỹ it ſhal bee rected his owne folly that hee refuſed the money when lawfull profer was made of it vnto him &c.

336 ¶ Alſo, if a feoffement be made ẘ ſuch condition, that if the feoffee pay to the feoffour at ſuch a day betwene them limitted xx. li. ỹ thē the feoffee ſhall haue the lād to him and to his heires, and if he fayle to pay the money at the day &c. ỹ then it ſhalbe lawful to the feoffour or to his heires, to enter &c. & if after, before the day ſet, the feoffee ſelleth the land to another, & therof maketh a feoffemēt vnto him, in this caſe if the ſecond feffee wil tender ỹ ſūme of money at the day ſet to the feoffour, and the feoffour refuſeth it &c. then hath the ſeconde feoffee eſtate in the lande clerely without condition, And ỹ cauſe is, for ỹ the ſecond feoffee had intereſt in the condition for ſaluation of his tenauncy, And in this caſe it ſeemeth that if the firſt feoffee after ſuch ſale of the lād wil tender the money at the day ſet &c. to the feoffour. that ſhalbee good ynough for the ſaluation of the eſtate of the ſeconde feoffee, for thys that the firſt feoffee was priuy to the condition, and ſo the tender of anye of them is good ynough &c.

337 ¶ Alſo, if ỹ feoffemēt be made vpon cōdition, that if ỹ feoffor pay a certeine ſūme of money to

note a tender by
ye executor or
[illegible] & a refusall doth give ye heire of ye feoffor a
title of entry, & here is a diversity [illegible] when a tender
& a refusall shall give a third person title of entry. if a man be
bounde in an obligacion with condicion to infeoffe b (which is
a straunger) before a day & ye obligor doth offer to infeoffe b & he
refuseth ye obligacion is forfeited for ye obligor hath taken upon
him to infeoffe [illegible] which refusall cannot satisfie ye condicion
because not [illegible] if made but if ye feoffee hath [illegible] ye condicion
to be made to ye obligee or to any other for his benefit a tender

to the feoffee, that then it shalbe lawful to the feoffour and to hys heires to enter &c. In this case if the feoffour die before the day of payment, & the heire will tender to the feoffee the money, such tender is voide, for this that the tyme within which the tender ought to bee made, is past. For when the condition is, ỹ if the feoffour pay the money to the feoffee, this is as much to say, that if the feoffour duryng his lyfe pay the money to the feoffee &c. And when the feoffour dyeth, then the time of the tender is past. But otherwise it is where a day of payment is ỹmitted, and the feoffour dieth before the day, then may the heire tender the money as it is aforesaide, for thys at the tyme of the tender was not past by the death of ỹ feoffor. Also it seemeth in such case where the feoffour dyeth before the day of paiment, if the executors of the feoffour tender the money to the feoffee at the day of payment, the tender is good ynough. And if the feoffee refuse this, the heires of the feoffor may enter &c. And the cause is for this that the executours represent ỹ persō of their testator &c. And note wel, ỹ in al such cases of cōdition of paymēt of certayne ſume in grosse, touching lands or tenementes if lawful tender be once refused, he that ought to pay ỹ money is thereof quited & clerely discharged for euer.

¶ Also if the feoffee in mortgage before ỹ day of paymēt that shalbe made vnto hī make his executors &c. & his heire enter into the land as

as he ought. It ſemeth in this caſe ꝙ the feoffour ought to pay the money at the day ſet to the executours, & not to the heire of the feoffee for this that the money at the beginning belonged to the feoffee in manner as a dette. And it ſhalbe vnderſtood that the eſtate was made becauſe of borowing of the money of the feoffee, or becauſe of another dette. And for this the paimēt ſhall not be made to the heire of the feoffee as it ſeemeth. But the wordes of the condition may be ſuch, ꝙ the paiment ſhalbe made vnto the heire, as if the cōdition were ꝙ the feoffor pay to the feoffee or to his hyres ſuch a ſūme at ſuch a day &c. There after the death of the feoffee (if he die before the day limitted) thē the paimēt ought to be made to the heire at the day ſet &c.

340 ¶ Alſo in ſuch caſe of a feoffemēt in morgage a queſtiō hath been demaunded in what place the feoffour is bound to tender the money to ꝙ feoffee at the day ſet &c. And ſome haue ſayde that vpon the land ſo holden in morgage, for this that the condition is dependant vpon the land, and they haue ſaid that if the feoffour be ready vpon the lande to pay the money at the feaſt or day ſet, and the feoffee bee not at that time there, ꝙ then the feoffour is excluded and diſcharged of paiment of the money, for thys ꝙ no defaut was in him, but it ſemeth to ſoe mē ꝙ the law is contrary, & the defaut is in him. For he is bound to ſeeke the feoffee if he be thē at any time in any maner of place within the

realme

realme of England. As if a man be bound in
an obligation of xx.li. vpō condition endorsed
vpon the obligation that if he pay to him to
whom the obligation is made at such a day
x.li. that then the obligation of xx.li. shall lose
his force and shalbe holden for nought, in this
case it behoueth him that made the obligation
to seeke him to whō the obligation is made,
if hee be within Englande, and at the day set,
to tender to him the said x.li. &c. And other-
wise he forfaiteth the sūme of xx.li. compised
within the obligation, and so it seemeth in the
other case &c. And though ỹ some haue sayde
ỹ the condition is dependant vppon the lande
yet this is not proued that the feasaunce of the
condition to be performed ought to be made
vpon the land &c. No more then if the condi-
tiō were that if the feoffor should do at such a
day &c. an especial corporal seruice to ỹ feoffee
not naming the place where the corporal ser-
uices should be done. In this case the feoffour
ought to do such corporall seruice at the daye
limitted to the feoffee in what soeuer place in
Englād that ỹ feoffee be, if he wil haue aduā-
tage of the condition &c. And so it seemeth in
that other case. And it seemeth to them that
it shalbee more properlye saide that the estate
of the lande is dependaunt vppon the condi-
tion &c. then to saye, that the conditpon is
dependaunt vppon the lande, but enquire &c.

¶ But if a feoffement in fee bee made reser- 341
uing

uyng to the feoffour an annuel rent, & for de-
faut of paiment a reentre &c. in this caſe it ne-
deth not to the tenant to tender the rent whē
it is behinde, but onely vppon the lande, for
this that this is a rent going out of the lande.
which is rent ſecke. For if the feoffour be
once ſeiſed of his rent, and after hee commeth
vpon the land &c. and the rent is denyed hym
&c. he may haue an aſſiſe of nouel diſſeiſin, for
though he may enter becauſe of the condityon
broken, yet he may chooſe, that is to ſay, to en-
ter or to haue an aſſiſe. And ſo is there diuer-
ſitie as to the tender of the rent that is going
out of the land, and of tender of another ſūme
in groſſe which is not going out of any lande.
342. And therefore it ſhalbe ſure and a good thinge
for them that will make ſuch feoffement in
mortgage, to put and ſet a ſpecial place wher e
the money ſhalbe payde. And the more ſpecy-
all that it is put, the better it is for the feoffor.
As if A. enfeoffe B. to haue to him and to
hys heires vppon ſuch condition, that yf A.
pay to B. in the feaſt of ſaint Michaell the
archangel next cōming in ꝑ cathedrall church
of S. Paule of London within 4. hours next
before the houre of noone of ꝑ ſame feaſt at the
roode loft of the North doze within the ſame
church, or any other certaine place within the
ſame church, that then it ſhalbe lawfull to the
foreſayd A. and to his heires to enter &c. In
ſuch caſe it needeth not to ſeeke the feoffee in
any other place, but in the place compryſed
in the

in ỹ indenture nor to be there more lōger time then the time specified in the same indenture, for to render or pay the money to the feoffee.

¶ Also in such case where the place of pay- 343
ment is limitted, the feoffee is not bound to receiue the payment in none other place, but in the place so limitted. But yet if he receiue the payment in any other place, that is good ynough, and as strong for the feoffour, as if the receit had bene in the place so limitted &c.

¶ Also in this case of feoffement in morgage, 344
if the feoffour, pay the feoffee an hoyle or a cup of siluer, or a ringe of golde, or anie other such thing in full satisfaction of the money, and the other this receiueth, this is good ynough, and as strong as if he had receyued the summe of money, though the hoyle, or anie of the other thinges bee not the twentith part worth in value of the summe of money, for this that the other hath accepted it in plaine and full satysfaction.

¶ Also if a man enfeoffe an other in fee vpon 345
condition that hee and his heires shall yeelde to a straunger and his heires a yearelie rent of xx.s. and if hee and his heires fayle of payment of this, that then it shalbe lawfull to the feoffour and to his heires to enter, this is a good condition. And yet in this case though such a yearely rent bee called an annuel rent, this is not properly a rent, for if it shalbe rent, it ought to bee rent seruice, rent charge, or rent secke, and it is none of them, for if the straun-

ger were ſeyſed of this, & after it were to him denyed. he ſhal neuer haue an aſſiſe of this, for this that it iſſueth not out of ane landes, and ſo the ſtraunger hath no remedye if any ſuch yerely payement bee behinde in this caſe, but that the feoffour and his heires may enter &c. and yet if the feoffour and his heires enter for defaut of payment, then ſuch rent is gone for euer. And ſo ſuch rent is but a payement ſet to the tenaunt and to his heires, that if they wil not pay this after the forme of the indenture, that they ſhal leeſe their land by the entre of the feoffour or his heires for defaut of payment. And in this caſe it ſeemeth that the feffee & his heires ought to ſeeke the ſtraunger & his heires if they be in England, becauſe that no place is limitted where the payment ſhalbe made, & becauſe that ſuch rent is not goinge out of any land &c.

346 ¶ And here note wel .ij. thinges, one is, that no rent that is properly ſayd rent, may bee reſerued vppon ane feoffement, gift, or leaſe. but only to the feoffour or to the leſſour, or to their heirs, & in no manner may bee reſerued to any ſtrange perſon. But if .ij. iointenantes make a leaſe by deede indēted, reſeruing to ỹ one a certaine yereli rent, that is good ynough to him to whom the rent is reſerued, for this that he is priuie to the leaſe and not a ſtranger to this

347 &c. The ſecond thing is, that no entre or reentre (which is al one) may be reſerued nor geeuen to any perſon, but onelie to the feoffour or

or to the donour or to the lessour, or to their heires, and such entre may not bee aliened nor graūted to any ꝓion. For if a man let lāds to another for terme of life by indenture, yelding to ỹ lessour & to his heires certeine rent, & for defaut of payment a reentre &c. if after ỹ lessor by a deede graunt the reuersion of the lande to another in fee, & the tenāt for terme of life attorneth &c. if the rent after be behynd, the grātee of the reuersion may distraine for the rent, for this ỹ the rent is incident to the reuersion, but hee may not enter into the land & put out the tenant as the lessour might, or his heires if the reuersion had ben continued in them &c. And in this case the entre is takē away at all time, for the grauntee of the reuersion may not enter Causa qua supra. And the lessour nor his heires may not enter, for if the lessor may enter, then hee ought to bee in his first estate &c. & that may not bee, for this that he hath put from him the reuersion &c.

¶ Also if there be lorde and tenaunt, and the tenant make such a lease for terme of lyfe, yelding to the lessour & to his heires such yerely rent, and for defaut of payement a reentre &c. if after the lessour die without heire, during the state of the tenaunt for terme of lyfe, by whych the reuersion commeth to the Lorde by way of escheate, and after the rent of the tenaunt for terme of lyfe is behynde, the lorde may distraine the tenaunt for the rent behynde, but hee may not enter into the land by force of 348

the condicion &c. for this that he is not heire to the feoffour &c.

349 ¶ Also if land be graūted to a man for terme of yeares vpon condition, that if he paye to the graūtour within .ij. yeres xl. markes, that then he shal haue the lād to him & to his heires &c. In this case if the graūtee enter by force of the graunt, & after he payeth to the grauntour xl. markes within the .ij. yeres, yet he hath not hinge in the lād but for terme of the .ij. yeres, for this y no liuerie of seisin was to him made at the beginning, for if he had had frankftenement and fee in this case because he hath performed the condicion, then should he haue frankftenement by force of the first graunt where no liuery of seysin was made thereof, which should bee against reaſō &c. But if the graūtor had made liuery of seisin to the graūtee by force of the graūt, then hath the graūtee the frankftenemēt & the fee vpon the same condition.

350 ¶ Also if landes bee graunted to a man for terme of fiue yeres, vppon condition that hee paye to the grauntour within the first two yeres xl. markes, that then hee shal haue fee, or els but for terme of the fiue yeres, and liuery of seysin is made to him by force of the graūt. Now he hath a fee simple condicionel &c & if in this case the graūtee pey not to the graūtour the xl. markes within the same two first yeres, thē immediatly after the lāe two yeres the fee and the frankftenement is and shalbee adiudged to the grauntour, for this that the graun-

grauntour may not after the two yeres incō-
tinent enter vpon the grauntee, for thys that
the grauntee hath yet tytle by three yeares to
haue and to occupy the land by force of ꝯ ſame
graunt. And ſo for this, that the condition of
part of the grauntee is broken, and the graun-
tour may not enter: the lawe ſhal put the fee &
franktenemēt in the grauntour. For if ꝯ grā-
tee in this caſe make waſte, then after the
breaking of the cōdition &c. and after the two
yeres, the grauntour ſhall haue his writte of
waſt, and this is a good proof that the reuerſi-
on is to hym &c. Wyt in ſuche caſe of feoffe- 351
ments vpon condition where the feoffour may
enter lawfullye for the condition broken &c.
There ꝯ feffeur hath ꝯ franktenement before
the entre &c.

¶ Alſo, if a feoffement bee made vppon ſuche 352
condition ꝯ the feoffee ſhall geeue the land to
the feoffour, and to the wife of the feoffour, to
haue and to holde to them and to the heires
of their two bodyes engendred, and for de-
faute of ſuch iſſue, to remayne to the ryght
heires of the feoffour. In this caſe if the huſ-
bande die, liuing the wyfe before eſtate in the
tayle made to hym, then ought the feoffee by
the lawe to make eſtate to the wyfe, as lyke
to the condition, and as lyke to the entent of
the condycion as hee maye make it, that is to
ſay, to let the lande to the wyfe for terme of
lyfe wythout impechement of waſte, the re-
mainder after her decеaſe to the heires engen-

dred of the body of her husband & hers, & for default of such issue, the remaider to the right heires of the husband.

¶ And the cause why ỹ lease shalbe made in this case to the woman sole without empechme of waste is for this, ỹ the condition is, that the state shalbe made to the husbād & his wyfe in the taile. And if such estate had bē made in the life of ỹ husband, thē after ỹ death of her husband, she hath estate in the taile sole, which estate is without impechmēt of waste, & so it is reason, ỹ if after, a mā may make estate to the intent of the condition &c. ỹ he shal make it &c. though that she cannot haue estate in the taile as she might haue had, if the gift in the tayle had bē made to the husbād & to her in the life of her husband &c.

353 ¶ Also in this case if ỹ husbād & ỹ wife haue issue & die before the gift in the taile made vnto thē &c. then ought the feoffee to make estate to ỹ issue, & to the heirs of the father & mother engendred, & for default of such issue &c. the remainder to the right heires of the husband &c. And the sāe law is in other cases semblable. And if such a feoffor wil not make such estate when he is reasonably required by them that ought to haue estate by force of ỹ cōdition &c. Then may the feffour & his heires enter &c.

354 ¶ Also, if a feoffement be made vppon condition that the feoffee shal enfeoffe many men, to haue and to holde, to them and to their heires for euer, and all they that ought to

haue

haue estate, by before any estate made vnto the then ought the feoffee to make the estate to ye heirs of him ye survyueth of them, to haue & to hold to him & to ye heires of hi ye survyued &c.

¶ Also, if a settement be made vpō condition to enfeoffe an other, or to geeue in the tayle to an other &c. if the feoffee before the performing of the condition enfeoffe a straunge person, or make a leals for terme of life, then may the feffour and his heires enter &c. for this, that hee hath disabled him selfe to performe the condition, in so much that he made estate to an other &c. In such manner it is, if the feoffee before the condition performed, let ye same land to a straunger for terme of yeres. In this case the feffour or his heires may enter &c. for this that the feffee hath disabled himselfe to make estate of the tenementes according to that, that was in the tenements when estate therof was made vnto him, for yt hee will make estate according to the condition &c. then may the feoffee for terms of yeres enter & put oute hym to whom the estate is made &c. and to occuppe this during his terme. And many haue sayde, that if such a feoffement bee made to a man sole vppon the same condition, and before that hee hath performed the condition hee taketh a wife, then the feoffour or hys heire may incontinent enter, for thys that yt hee haue made estate according to the condycion, and after dyeth, hys wife shalbee endowed and may recouer her dowry by a writ of

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power &c. And so by takinge of a fine, the tenements be put in other plite then they were at the time of the feoffement vpon condition, for this that no such woman was bowable, nor should be endowed by the lawe &c.

358 In the same maner it is, if the feoffor charge the land by his deede of rent charge before the performing of the condition, or be bound in a statute staple, or statute marchant, that in such cases, the feoffour and his heires maye enter, Causa qua supra. For whosoeuer commeth to the tenements by the feoffement of the feoffee then the tenementes must be lyable, and bee put in execution by force of the statute aforesaid. But when the feoffour or his heires, for ỹ causes aforesaid haue ēntred so as they ought as it semeth &c. Then al such things ỹ before tyme the entre maye trouble or incumber the tenemēts so geuen vpon cōdition, as touching the same tenement, be vtterly defeated &c.

359 Also, if a man make a deede of feoffemēt to an other, and in the deede is no condition &c. And when the feoffour will make to hym liuery of seisin by force of the same deede he maketh liuery of seisin vpon certeine conditions &c. In this case nothing of the tenemēts passeth by the deede, for this ỹ the condition is not cōprised in the deede, & the feoffement is of such force, as if no such deede had bē therof made &c.

360 Also if a feffement be made vpon such cōdition, ỹ the feffee shal not alien ỹ land to any mā, this cōdition is voide, for this, that when a man

a man is enfeoffed in landes or tenements, he hath power to alien them to ſome perſon by the lawe. For if ſuche condition ſhoulde bee good, then the condycion putteth him oute of all the power that the lawe geeueth, whyche ſhoulde bee againſt reaſon, and for this ſuch condition is voide. But if the condycion bee ſuch, that the feffee ſhal not alien to one ſuch, namynge his name, or to any of his heires, or his ſtates &c. or ſuch other like, the which condition taketh not away all the power of alienation of the feoffee &c. then ſuch condition is good. 361

Alſo, if tenements bee geeuen in the taile, vpon ſuch condityon that the tenaunt in the tayle, nor his heires &c. ſhall not alien in fee, nor in taile, nor for terme of another s lyfe. but for their owne liues &c. ſuch alienation, & condition is good. And the cauſe is for this, that when hee maketh ſuch alyenation and diſcontinuaunce, he doth contrary to the entent, for which the ſtatute of Weſtminſter the ſeconde was made, by which eſtatute, the eſtates in the tayle be obteyned, for it is prouyded by the wordes compyled in the ſame eſtatute, that ỹ entent of the makyng of the ſame ſtatute was that the will of ỹ donour in ſuch caſes ſhoulde be obſerued. And when tenant in ỹ taile maketh ſuch diſcõtinuance, he doth the contrary to that &c. And alſo in eſtates in the tayle of any tenemẽts whẽ the reuerſion of the fee ſimple is in an other perſon, whẽ ſuch diſcõtinuance 362 363

ance is made, then the fee ſimple in the reuer-
ſion, or the fee ſimple in the remainder is dyſ-
continued, and for that, that the tenaunt in
the taile ſhal do no ſuch thinge againſt ryght,
ſuch cõditions are good, as it is aforeſaid &c.

364 ¶ Alſo a mã may geue land in the taile vpõ
ſuch condition, that if the tenaunt in the taile
or his heires alien in fee, or in taile, or for term
of anothers lyfe &c. And alſo, that yf all the
iſſues comming of the tenaunt in the tayle, be
dead without iſſue, that then it ſhalbe lawful
to the donour & to his heires to enter &c. And
by ſuch way the ryght of the tayle maye bee
ſaued after ſuch diſcontinuance to the iſſue in
the taile if there be any, ſo that by way of en-
tre of ỹ donour or of his heires ỹ taile ſhal not
be defeated by ſuch condition, & yet if ỹ tenant
in the taile in this caſe, or his heires make any
diſcontinuance &c. he in ỹ reuerſiõ or his heirs
after this ỹ the taile is determined for defaut
of iſſue &c. may enter into the land by force of
ỹ ſame condition, and ſhal not be driuen to ſue
a writ of Formedon in the reuerſion.

365 ¶ Alſo, a man maye not pleade in an accyon
that eſtate was made in fee, in the taile, or for
terme of life vppon condition, but if he vouche
a record therof, or ſhew a writing vnder ſeale,
prouing the ſame condition, for it is a cõmon
erudition & learning, ỹ a man by pleading ſhal
not defeat any eſtate of frankeneměr by force
of any ſuch condition, vnleſſe he ſhew ỹ proofe
of ſuch condition in writing &c. except it be in

ſome

ſome eſpeciall caſe, but of chattels reals, as of a leaſe made for terme of yeres, or of graūtes of wardes made by wardens in chiualry, & of ſuch other &c. A man may plede ỹ ſuch giftes or graunts were made vppon condicion &c. Without ſhewing of any writing of condition, & in the ſame maner a man maye do of giftes and grauntes of chatels perſonels & of contractes perſonels &c.

¶ Alſo, though ỹ a man in ſome accion may not plede an accion that toucheth & cōcerneth franktenement without ſhewing of writinge thereof, as it is afore ſayde, yet a man may bee holpen vppon ſuche condition by the verdict of twelue mē, taken at large in Aſſiſe of dyſſeiſin, or in ſome other actiō where ỹ Juſtices wyll take the verdict of the twelue iurours at large. As put the caſe that a man ſeiſed of certaine lande in fee, letteth the ſame land for terme of lyfe wythout deede, vppon condition to yeelde to the leſſour a certayne rent, and for default of payment a reentre &c. by force of which, the leſſee is ſeyſed as of franktenement, and after the rent is behind, by which ỹ leſſour entreth into the lande, & after the leſſee arraineth an aſſiſe of nouel diſſeiſin of the lād againſt the leſſour, the which pleadeth that hee doth no wrong, ne no diſſeiſin, & vpon this the aſſiſe is taken. 366

¶ In this caſe the recognitours of the aſſiſe may ſay & yeld to the Juſtices their verdit at large vppon all the matter, as to ſaye that the de-

defendãt was seised, & so seised, let ꝯ same lãd to the pleintife for terme of his life, to yelde to the lessour such annuel rent payable at such a feast, & vpon such condition, that if the rent be behynd at any such feast, ꝯ it ought to be paid, ꝯ thẽ it shalbe lawful to ꝯ lessour to enter &c. by force of which lease ꝯ pleintife was seysed in his demesne as of franktenement, & after ꝯ rent was behynde at such a feast in such a yere &c. for which the lessour entred into the lande vpon ꝯ possessiõ of the lessee, & praieth the discretiõ of ꝯ Justices, if this be a disseisin done to ꝯ pleintife or not. And thẽ for this ꝯ it appeareth to ꝯ Justices, ꝯ this was no disseisin done to the pleintife, in so much ꝯ the entre of the lessour was lawful vpon hym, ꝯ Justices ought to geue iudgement, ꝯ the pleintife shall take nothing by his writt of assise. And so in such case ꝯ lessour shalbe holpẽ, & yet no writing was euer made of the condition, for as wel as the turourz may haue knowledge of, ꝯ lease, in the same maner may they haue knowledge of ꝯ condition rehersed in the lease. In ꝯ same maner is it of a feffemẽt in fee, or a gift in the taile vpon cõdition, though neuer writing were made therof &c. And as it is saide of a verdit at large in assise. In the same maner it is of a writte of entre founded vpon disseisin, and in al other actiõs where ꝯ Justices will take a verdict at large there where the verdit at large maketh the nature of the matter put in the issue.

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¶ Also

¶ Also in such case where ỹ enquest may say their verdit at large, if they will take vpō thē ỹ knowlege of the law vpō ỹ matter, they may say their verdit generall, as it is put in their charge, as in ỹ case aforesaid, they may wel say ỹ the lessor disseised not ỹ lessee if they will &c. 368

¶ Also in the same case, if the case were such that after this that the lessour had entred for detaut of paimēt &c. that the lessee had entred vppon the lessour, and him disseised: In this case if the lessour arrayneth an assise against the lessee, the lessee may barre him of his assise, for hee may plede agaynst him in barre, howe the lessour that is plaintise made a lease to the defendaunt for terme of life, sauinge the reuersion to the plaintise, the which is a good ple in barre, in so much that he knowlegeth the reuersion to be to the plaintise, and in this case hath no matter to helpe him, but the condicion made vpon the lease, and that hee may not plede, for that he hath no writinge, and in so much ỹ he may not answere to the barre, he shalbe barred. And so in this case yee may see that a man is seised and hee shal haue assise. And yet if the lessee be plaintise, and the lessour defendaunt, hee shal barre the lessee by verdit at the assise. But in this case where ỹ lessee is defendaunt, if he will not plede the said plee in barre, but pleade no wrong no disseysin, then the lessour shal recouer by assise. Causa qua supra. 369

¶ Also because such conditions be most com- 370

monly

monly put & specified in deedes indented, some
litle thyng shalbe said here (to thee my sonne)
of indentures & of a deede poll cõteining cõdi-
cions. And it is to weete ỹ if the indenture be
bipertite or tripytite or quadripartite, al ỹ parts
of the indenture be but one deede in the law &
euery part of the indenture is of him seise of
as great force and effect, as al the partes toge-
371 ther. And the making of indentures is in two
maners. One is to make thẽ in the third per-
son, an other maner is to make thẽ in the first
person. The making in the third ỹson, is as in
such forme. This indẽture made betwene A.
of B. of the one ỹt, & C of D. of the other
parte, witnesseth ỹ the forsaid A. of B. hath
geeuen & grãted, & by this ỹsent dede inden-
ted, hath cõfirmed to the forsaid C. of D. such
land, to haue &c. vpon ỹ condition &c. In wit-
nes wherof the parties beforsaid interchaun-
geably haue put to their seals, or els thus. In
witnes wherof to ỹ one part of this indẽture
remaining wt the said C. of D. the forsaid A
of B. hath put to his seale, & to the other part
of the said indẽture remaining wt the said A.
of B. the sayde C. of D. hath put to his seale
geuen &c. Such indentures are called inden-
tures made in the thirde person, for this ỹ the
verbes be in the third person, & such fourme of
indenture is the more sure making, for ỹ it is
372 more cõmonly vsed, the making of indentures
in the first person is in such forme.

¶ To all true christian people to whom this
ỹsent

Present writing indented shall come A. of B. greeting in our lord euerlasting. Know ye, me to haue geuen & graunted, & by this my present deede indented to haue confirmed to C. of D. such land &c. Or els thus, know all men that be present, & them ꝑ be to come, ꝑ I A. of B. haue geuē & graūted, & by this my ꝑsēt dede indēted haue confirmed to C. of D. such lande &c. to haue &c. vpon ꝑ condition following. In witnes whereof aswell I the sayd A. of B. as the aforesaid C. of D. to these indētures interchangeably haue put to our seales, or els thus. In witnes whereof, to one part of this indenture, I haue put to my seale, & to the other part of the same indenture the foresaid C. of D. hath put to his seale &c.

¶ And it seemeth ꝑ such an indenture made in the first person, is as good in the lawe as ꝑ indenture made in the thirde person, whē both parties haue thereto put their seales, for in the indēture made in the third persō or in the first person, if mencion be made that the grauntour hath set his seale onely, and not the grauntee. then is the indenture onelie the deede of the grauntour. But where mencyon is made ꝑ the grauntee hath set his seale to the indēture &c. then is the indētnre as wel the deede of the grauntour, as the deede of the grauntee, and thus it is the deede of both, & also euery part of the indenture is the deede of both parties in such case &c. 373

¶ Also if estate bee made by indenture to a man 374

man for terme of his life, the remainder to an other in fee vppon condition &c. and if the tenaunt for terme of life hath ſet his ſeale to one parte of the indenture, and after dyeth, and he in the remainder &c. entreth by force of his remainder, in this caſe he is holden to performe all the conditions comprised within the indenture, as the tenaunt for terme of lyfe ought to do in his life, and yet hee in the remainder neuer ſealed anie parte of the indenture, but the cauſe is that in ſo much that hee entreth and agreeth to haue the land by force of the indenture, hee is holden to perfoyme the condition within the indenture if he will haue the land &c.

375 ¶ Alſo if a feoffement be made by deede Poll vppon condition &c. And for this that the condition is not performed, the feoffour entreth and happeth the poſſeſſion of the deede poll, if the leſſee bring an action of that entre againſt the feoffour, it hath beene a queſtion if the leſſour may plede the condition &c. by the deede poll againſt the feoffee, and ſome haue ſayd nay, in ſo much that it ſeemeth vnto the that a deede pol, and the propertie of the ſame deede, appertaineth to him to whome the deede is made, and not to him that made the deede. And in ſo much that ſuch a deede appertaineth not to the feoffour, it ſeemeth to them that he may not plede this deede &c. And other haue ſaide the contrary, and haue ſhewed diuers cauſes. One is, if the caſe be ſuch ſ in the action be-

twene

thwene them the feoffee plede the same deede, & shew this to ꝑ court. In this case in so much ꝑ the deede is in the court, the feoffor may shew to the court how in the deede be diuers conditions to be performed of the parte of the feoffee, & for this ꝑ they be not performed hee entred &c. & thereto he shalbe receiued, by ꝑ same reason when the feoffour hath the dede in hand & sheweth it to the court he shalbe well receiued to plede of this &c. And namely when the feoffour is privy to the dede, for he ought to be privy to the deede, when he made the deede.

376 ¶ Also if two men make or do a trespas to mother, the which releaseth, to one of them by his deede, all actions personels &c. Notwithstanding he sueth an action of trespas against the other, the defendant may wel shewe that the trespas was done by him & another his felowe, & that the plaintife by the dede that he sheweth for the releaseth to his fellowe all actions personels, & yet such deede appertayneth to his fellowe & not vnto him, but for this that he may haue aduãtage by the deede, if hee will shew the deede to the court, hee may wel plede &c. Therefore by the same reason in the other case, whē ꝑ feoffor ought to haue aduãtage by the cõditiõ cõprised in the dede poll.

377 ¶ Also if the feoffee gaue or graunted the deede poll to the feoffour, such graunt shalbee good, and then the deede & the property of the deede appertaineth to the feoffour. And when the feoffour hath the deede in hande, and pleadeth

deth it to the court, it shalbe rather vnderstãded that he came to the dede by a lawfull meane, then by a tortious meane, & so it semeth ỹ they may wel plede such a deede poll, ỹ cõteyneth condition &c. if he haue the deede in hande &c. Ideo sæpe quære de dubijs, quia p rationes queritur ad legittimã rationem.

378 ¶ Estates that men haue vppon condition in the lawe be such estates that haue a condition in the lawe annexed to them, though it be not specified in writinge, so as a man graunt by his dede to another the office of a Parkershippe of a Parke, to haue and to occupie the same office for terme of hys life, the estate that hee hath in the office, is vppon condition in the lawe, that is to say, that the Parker well and truelie shall keepe the parke, and do that, that to the office appertayneth to doe, or otherwise that it shall bee lawfull to the grauntour and to his heires to put him out, and to graunt that to another if hee will &c. And such condition as is vnderstode by the lawe to be annexed to some thing, is as strong as if the condition were set or put in writing.

379 In the same maner it is of grantes of offices of stewardes, constables, bedels, bailifes, and other officers. But if such office bee graunted to a man to haue and to occupie by him or by his deputie, then if the office bee occupyed by him or by his deputy as it ought by the lawe to bee occupied, this sufficeth for him, or els the grauntour or his heires may put him out, as

as is aforesaid.

Also estates of lāds or tenemēts may be vp- 380
pon cōditiō in ỹ law, though ỹ vpon the estate
made, there was no rehersal made of the cōdi-
tion. As put the case ỹ a lease be made to the
husbād & his wife, to haue & to holde to them
during the couerture betwene thē, in this case
they haue estate for terme of their two liues vpō
cōditiō in the law ỹ is to say, if one of thē die,
or if deuorce be made betwene thē, that then it
shalbe lawfull to the lessor & his heires to en-
ter &c, & that they haue estate for terme of their 381
two liues it is proued thus. Euery man that
hath estate or franktenemēt in any lāds or te-
nements, either he hath estate in fee, or in fee
taile, or for terme of life, or for terme of anothers
life, & yet by such lease they haue franktenemēt.
But they haue not by that grāt, fee nor tayle,
nor for terme of anothers life. Ergo they haue
estate for terme of their two liues, but this is
vpon condition, in the law in forme aforesayd.
And in this case if they make waste, the lessor
shal haue against them a writ of waste, suppo-
sing by his writ. Quod tenent ad terminum vi-
te &c. but in his plee, he shal declare how & in
what maner the lease was made. In ỹ same 382
maner it is if an Abbot make a lease to a mā,
to haue & to hold duringe the time that ỹ lessor
is Abbot. In this case ỹ lessee hath estate for
terme of his owne life, but this is vppon con-
dition in law, that is to say, that if the Abbot
dis, or resigne, or be deposed, it shalbe lawfull

383 to his ſucceſſours to enter &c. Alſo a mā may ſee in the booke of aſſiſes. An. 38. E. 3. a plee of aſſiſe in this forme that ēſueth. Aſſiſe of Mouel diſſeiſin was ſometime brought againſt one A. ꝑ pleded to the aſſiſe, and was found by verdit ꝑ the aūceſter of ꝑ pleineife demyſed the teneſnes to be ſold by the defendant that was his executor to make diſtributiō of the money for his ſoule, & it was foūd that a man after ꝑ death of ꝑ teſtator tendered him a certein ſūme of money for the teneſnts but not to the value, and ꝑ the executour after helde the tenementes in his owne hand by two yere, to the intent to haue ſolde the tenementes more deerer to ſome other, and it was found that hee had all the whyle after taken the profites of the tenementes to his owne vſe, without ante thinge doing for the ſoule of the dead. Monbray, the executour in ſuch caſe is holden by the lawe to make the ſale as ſoone as he may after the death of the teſtatour and it is found that he refuſed to make the ſale, & ſo the default was in him, and alſo by force of the deuiſe hee was holden to haue put al the profites of the ſayde tenementes to the vſe of the dead, & it is foūd that he hath taken them to his owne vſe and ſo another default is in him, wherfore it was adiudged that the pleintife ſhould recouer &c. And ſo it appereth in the ſaid iudgement that by force of the ſaide deuiſe the executour had none eſtate nor power in the tenementes but
384 vpon condition in the lawe &c. And in ſuch ca-

les it nedeth not to haue ſhewed any deed re-
hearſing the conditions &c. Ex paucis dictis, in-
tendere plurima poſſis. Moze ſhalbe ſaid of con-
ditions in the Chapter of Diſcents that take
away entre, & in the Chapter of Releales, & in
the chapiter of Diſcontinuance.

¶ Diſcents.

DIſcents that take away entres be in two 385
maners, that is to ſay, where the diſcent is
in fee or in fee taple. Diſcent in fee that taketh
away entre is if a man ſeyſed of certein landes
or tenementes, is diſſeyſed, and the diſſeyſour
hath iſſue & dyeth of ſuch eſtate ſeiſed: Now
the tenementes diſcend to the iſſue of the diſ-
ſeiſour by courſe of ꝯ lawe as heire vnto him.
¶ And for this that the lawe putteth ꝯ landes
or tenements vppon the iſſue, & the iſſue com-
meth to the tenementes by courſe of the lawe
and not by his owne dede, the entre of the diſ-
ſeiſee is taken away, and is therof put to his
writ of entre vpō diſſeiſin againſt the heire of
the diſſeiſour to recouer the land.

¶ Diſcent in the taple that taketh away 386
entre is, if a man be diſſeiſed, and the diſſeyſor
geueth the ſame lande to another in the taple,
and the tenaunt in the taple hath yſſue and
dieth ſeiſed of ſuch eſtate, and the iſſue entreth,
in this caſe the entre of the diſſeiſee is take a-
way, and hee is put to ſue againſt the iſſue
of the tenant in the taple a writ of Entre vp-

pon disseisin &c.

387 ¶ And note well that in such discentes that take away entres, it behoueth that a man dye seised in his demeine as in fee taile, for dyinge seised for terme of life or for time of anothers life, shal neuer take away the entre &c.

388 ¶ Also a discent of reuersion or of remainder shal neuer take away entre &c. so ꝑ in such cases that take away entres by force of discēts it behoueth that he that dyeth seysed haue fee & franktenement at the time of his dyinge, or els such discent taketh not away entre.

389 ¶ Also as it is said of discēts ꝑ discēd to the issue of him that dieth seised &c. the same lawe is where they haue no issue, but ꝑ tenemts discēd to ꝑ brother, or to the sister, or to ꝑ vncle, or to some other cosin of him ꝑ dieth seised &c.

390 ¶ Also if there be Lord & tenant, and the tenant be disseised, & the disseisour alieneth to an other in fee, & the alienee dieth without heire, & the Lord entreth as in his escheat: In thys case the disseisee may enter vpon the Lord, for this ꝑ the Lord commeth not to the lande by discent, but by eschete.

391 ¶ Also, if a man seised of certein lande in fee, or in fee taile vpon condition to yelde certeine rent, or vpō other cōditiō, though that such tenant seised in fee or in fee tayle die seised, yet if ꝑ cōdition be broken in their life, or after their decease &c. this taketh not away the entre of ꝑ feoffour, nor of the donor, or of their heires, for this that the tenancy is charged with the cō-

dition

dition, and the estate of the tenancy is condi-
tionel in whose hands soeuer the tenancy shal
come &c.

¶ Also, if such a tenant vpō cōdition be dis- 392
seised, & the disseisor die therof seised, & the lād
descēdeth to ꝯ heire of ꝯ disseisor, now the en-
tre of ꝯ tenant vpō cōdition ꝯ was disseised,
is taken away, but if the condition bee broken
&c. then may the feoffor or ꝯ donor ꝯ made the
estate or their heires enter &c. Causa qua supra.

¶ Also, if a disseisor dy seised, & his heirz en- 393
ter &c. the which endoweth the wife of the dis-
seisor of the third part of the tenemēts, in this
case, as to the third that is assigned to ꝯ wife
in dower, incontinent anon after that the wife
entreth & hath possession of the sāe third part,
the disseisee may lawfully entre vpō the pos-
session of his wife in the same third part. And
the cause is for this, that when the wife hath
her dower, she shalbe adiudged in rather im-
mediatly by her husband thē by the heire, & so
as to ꝯ franktenemēt of the sāe third part, the
discent is defeated, & so ye may see how before
the dowemēt the disseisee might not enter in
any part &c. & after the dowement he may en-
ter vpon the wife, & yet he may not enter vpō
the other two parties that ꝯ heire of the dis-
seisour hath by discent &c.

¶ Also, if a woman bee seised of lande in fee, 394
whereof I haue right and title to entre, if the
woman take an husbande and haue issue be-
twene them, and after the wyfe dyeth seised,

and after that the husband dieth, & ỹ issue entreth &c. in this case I may enter vpon ỹ possession of the issue, for this that the issue commeth not to ỹ tenements immediatly by discent after the death of his mother.

395 ¶ Also, if a disseysour enfeoffe his father, & ỹ father entreth & dyeth of such estate seyzed, by which the tenements discend to the disseisor, as to the sonne & heire &c. In this case ỹ dysseisee may wel enter vpon the disseisour, notwithstanding the discent. for thys. ỹ as to the disseisin, the disseisour shalbe adiudged in but as the disseisour, notwithstanding the discent.

396 ¶ Also if a man seyzed of certeyne landes in his demeane as of fee, hath issue two sonnes and dyeth, and the yonger sonne entreth by abatement in the lande, the which hath issue, & of this dyeth seyzed, and the tenementes discende to the issue, and the issue entreth into the land, in this case the elder sonne or his heires may enter by the lawe vppon the issue of the yonger sonne, notwithstandinge the discent, for this, that when the yonger sonne abated in the lande after the death of his father, before any entre of the elder, the lawe intendeth that hee entreth in clayminge as heire vnto hys father, and for this that the elder brother claymeth by the same tytle, that is to say, as heire vnto his father, hee and his heires may enter vpon the issue of the yonger brother not withstanding the discent &c. for this that they clayme by one seise tytle. And in the same ma-

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ner it shalbe if there be many discents frō one
ilsue to another ilsue of ꝑ yōger sonne &c. But 397
in such case if ꝑ father were seysed of certeine
lōdes in fee, & hath ilsu & dieth, & ꝑ el-
der sōne entreth & is seised &c. And after ꝑ yō-
ger brother disseyseth him, by which disseisin
he is seysed of fee, and hath ilsue, and of suche
estate dyeth seised, then the elder brother may
not enter. but is put to his writ of entre vpon
disseisin for to recouer the lande. And the cause
is for this, that the yonger brother commeth
to the tenementes by a wronge disseisin made
vnto his elder brother. And for that wronge
ꝑ law may not entend ꝑ he claimeth as heire
to his father no more then if a strange person
had disseised the elder brother that neuer had
any title &c. And so may ye see the diuersitye
where the yonger brother entreth after the
death of his father, before any entry made by
the elder brother in suche case &c. and where
the elder brother entreth after the death of his
father, and is disseysed by the yonger brother
&c. In the same maner if a man seysed of cer- 398
taine lande in fee, hath ilsue two daughters,
& dieth, & the elder daughter entreth in ꝑ land,
claiming all the lande to her, and thereof onelye
taketh the profites, and hath ilsue and dyeth
seysed, by which her ilsue entreth, which ilsue
hath ilsue and dyeth seysed, and the second is-
sue entreth &c. et sic vltra. Yet the younger
daughter and her ilsue as to the halfe maye
enter vppon euery ilsue of the elder daughter.

not

notwithstãding such discẽt, for this that they claime by one seise title &c. But in suche case if both two sisters come into the land to enter after the death of their father, & thereof were seised, and after the elder sister therof disseised the yonger sister of that, ꝑ to her belongeth, & therof is seised in fee, & hath issue, & of such estate dieth seised, by which the tenements discend to the issue of the elder sister, then the yõger sister or her heires may not enter &c. Causa qua supra.

399 ¶ Also, if a man seised of certeyne lande hath issue two sonnes, and the elder brother is bastarde, and the yonger brother mulier and the father dyeth, and the bastard entreth and claimeth as heire vnto his father, and occupyeth the lande al his life wythout any entre made vpon him by the mulier, and the bastard hath issue and dyeth of such estate seysed in fee, and the land discendeth to hys issue, and hys issue entreth &c. in this case the mulier is wythout remedy, for he may not enter, nor he shall haue no action for to recouer the lande, for this that it is an auncient lawe in such case vsed, But

400 it hath ben an opynion of some men that that shalbe vnderstood where ꝑ father hath a sonne a bastard by a woman, and after he weddeth the same woman, and after the espousaile hee hath issue by ꝑ sãe woman a sõne or a daughter mulier, & the father dieth &c. If such a bastarde enter &c. and hath issue, and dyeth seysed &c. Then shall the issue of such a bastarde

haue

haue the land clerely to him as it is aforeſaide &c. And not any other baſtard borne of ꝑ mother that was not eſpouſed to his father, and this is a good & reaſonable opinion. For ſuch a baſtard borne before ꝑ eſpouſeis ſolẽpniſed betweene his father & his mother by the laſwe of holye church, is mulier, though that by the laſwe of the land he is a baſtard borne, and ſo he hath colour of entre as heire to his father, for this that he is by one laſwe mulier, that is to ſay, by the laſw of holy church. But otherwiſe it is of a baſtard that hath no manner of colour to entre as heire, in ſo much that hee may not in no laſw be ſaid mulier &c. for ſuch a baſtarde is ſayde Quaſi nullius filius. But in 40 c
ſuche caſe aforeſayde, where the baſtarde entreth after the death of his father, and the mulier putteth him out, & after the baſtard diſſeiſeth the mulier, & hath iſſue, & dieth ſeiſed, and the iſſue entreth, then the mulier may haue a writ of Entre vppon diſſeiſin againſt the iſſue of the baſtard, & recouer the land &c. And ſo may ye ſee the diuerſitie where ſuch a baſtard continueth his poſſeſſion al his life without any interruption, and where the mulier entreth & enterrupted the poſſeſſion of ſuche a baſtard.

¶ Alſo if a childe within age haue title & cauſe 40 2
to enter into any lands or tenements vpon an other ꝑ is ſeiſed in fee or in fee taile of ꝑ ſame lãds or tenemẽts, if ſuch a mã ꝑ is ſo ſeiſed die

of

of ſuch eſtate, ſo ſeyſed and the tenements diſcend to his iſſue during the time that ꝯ child is within age, ſuch diſcēt ſhal not toll the entre of the childe, but he may enter vpon the iſſue that is in by diſcent ꝛc. for this that no laches ſhalbe adiudged in a child within age in ſuch caſe ꝛc.

403 ¶ Alſo, if the huſband & his wife, as in right of the wife haue title and ryght to enter in the tenementes that another hath in fee, or in fee tayle, & ſuch a tenant dieth ſeiſed ꝛc. In ſuch caſe ꝯ entre of ꝯ huſband is taken away vpō ꝯ heire that is in by diſcent. But if ꝯ huſband die, thē the wife may well enter vpon the iſſue by diſcent, for this that the laches of the huſband ſhal not turne to the wyfe & to her heire in preiudice nor in dāmage in ſuche caſe, but ꝯ ꝯ wife & her heirs may well enter where ſuch diſcent is during the coverture ꝛc.

¶ Alſo, if a mā that is not of whole minde, 404
that is to ſay in latin. Qui non eſt compos men- 205
tis, hath cauſe to enter in any ſuch tenementes if ſuch diſcēt vt ſupra, de had in his life during the tyme that he was out of his mind, & after die, his heires may well enter vpon him that is in by diſcent. And in this may ye ſee a caſe ꝯ the heire may enter, & yet his auncеſter that had ꝯ ſame title may not ener, for he that was out of his minde at the time of ſuch dyſcent, if he wil enter after ſuch a diſcent, if actiō vpō this be ſued againſt him, he hath nothynge for him to plede, or to help him, but ſay ꝯ he was

out

out of mind at ꝯ time of such discēt ꝛc. And he
shal not be receiued to say this, for this ꝯ no
mā of ful age shalbe receiued in any plē by the
law to disait or disable his owen plō. But the
heire may wel disable the person of his ancest-
er for aduantage of the heire in such case, for
this ꝯ the laches may be abiudged by the law
in him ꝯ hath no discretiō in such case. And if 406
such a man out of his minde make a feoffemēt
ꝛc. he may not enter ne haue a writ called. Dum
non fuit compos mentis &c, Gaula qua supra. But
after his death, his heire may wel ēter or haue
the same writ, Dum non fuit compos mentis at
his election ꝛc.

¶ Also if I be disseised by a child within age ꝯ 407
alieneth to another in fee, & the alienee dieth sei-
sed, & the tenementes discende to his heire, the
child being within age, mine entre is taken away.
But if the childe within age entre vpō ꝯ heire 408
ꝯ is in by discēt as he wel may, for this ꝯ the
discent was during his nonage, then I may
wel enter vpon the disseisour, for this ꝯ by his
entre hee hath defeated & annulled the discent.
And in the same maner it is where I am sei- 409
sed. and the disseisour maketh a feoffement in
fee vppon condition ꝛc. And the feoffee dyeth
of such estate seysed ꝛc. I may not enter vpon
the heire of the feoffee. But if the condition be
broken so that by such cause the feoffour en-
dreth vpon the heire, now may I well enter,
for this that when the feoffour or his heires
enter for the condition broken, the discent is

vtterly defeated.

410 ¶ Also if I bee disseysed, and the disseisour hath issue and entreth into religion, by force of which the landes discende to his issue, in this case I may wel enter vpon the issue, and yet there was a discent: But for this that such discent commeth to the issue by the fathers deede, that is to say, for this that he entred into religion &c. his discēt cōmeth not to him by the deede of God that is to say, by death &c. mine entre is congeable and lawfull, for yf I arrayne an assise of Nouel disseisin agaynst my disseisour, though that hee after enter into religiō, this shal not abate my writ. But my writ this notwithstanding, shall abyde in his force and strength, & my recouery against him shalbe good, by the same reason ỹ discent that came to his issue by his owne deede may not put me from mine entre &c.

411 ¶ Also if I let to a man certaine landes for terme of twenty yeares, and another disseiseth me, and putteth out the termor, and dyeth seysed, and the tenements discend vpon his heire, I may not enter, and yet the lessee for terme of yeares may well enter, for this that by his entre hee putteth not out the heire that is in by discent frō ỹ franktenemēt ỹ vnto hī discēded, but onely claimeth to haue the tenements for terme of yeres, the which is no expulsinge of the franktenement of the heire, that is in by discent. But otherwise it is where mye tenaunt for terme of life is disseised &c. Causa

qua

qua supra &c.

¶ Also it is said ꝑ if a mā be seised of tenemēts 412
in fee by occupation in time of warre, & dyeth thereof seised in time of warre, & the tenemēts discēd to his heire, such discent putteth out no man of his entre. And of this a man may see a plee in a writ of Ayel. An 7. E. 2.

¶ Also ꝑ no dying seised (where al ꝑ tenemēts 413
come to another by succession) shal take away the entre of any person &c. For of prelates, Abbots, Priors, Deanes or Persōs of churches &c. though that there were xx. successions, this putteth no man from his entre &c. More shalbe said of discents in the Chapiter of Cōtinual claime &c.

¶ Continual claime.

¶ Continuall claime is, where a man hath 414
right and title to enter in any landes or tenements whereof another is seysed in fee, or in fee tayle, if hee that hath title to entre make continual claime to the lands and tenements, before the dying seised of him that holdeth the teneméts. Then though such a tenāt die therof seysed, and the lands & teneméts discend to his heire, yet may hee that hath made such claime or his heires enter into the landes and tenements discended, because of the contynuall clayme made, notwithstandinge such discent. As in case a man be disseised, & the disseisy maketh continual claime to the tenemēntes

in the

in the lyke of the disseisour though the disseysour die seysed in fee, & the land discendeth vnto his heires, yet may the disseysie enter vpon the possession of the heire, notwithstandinge such discent.

415 ¶ In the same maner it is, if tenãt for terme of life alien in fee, he in the reuersion, or hee in the remainder may enter vpõ ỹ aliene. And if such altene dy seised of such estate without cõtinual claime made to the tenentes before the dying seysed of the aliene, & the tenements becaule of the dying seysed of the alyene, discende vnto the heire of the aliene, then may not he in the reuersiõ, nor he in ỹ remainder entre. But if he in the reuersion, or he in the remainder ỹ hath cause to enter vpon the aliene, made cõtinual claime to the tenements before the dying seysed of the aliene, then such a man may enter after ỹ death of the aliene as well as he might in his life &c.

416 ¶ Also if lands be let vnto a man for terme of his life, the remaynder vnto another for terme of life, the remaynder vnto the thirde in fee, if the tenant for terme of lyfe alien to another in fee. and hee in the remainder for terme of life maketh continuel claime vnto the lande before the dying seysed of the aliene, & after the aliene dieth &c. and after hee in the remaynder for terme of lyfe dyeth before anie entre made by him.

¶ In this case hee in the remainder in fee may enter vppon the heire of the aliens, because

cause of cõtinual claime made by him that had
ꝑ remainder for terme of life, for this that such
right that he hath to ẽter, shal go & remain to
him in ꝑ remainder after him, in so much that
he in the remainder in fee, may not enter vpõ ꝑ
alienee in fee during ꝑ life of him in the remain-
der for terme of life, and because he might not
make cõtinual claim, for none may make cõti-
nual claime but whẽ he hath title to enter: But 417
it is to be shewed to thee my child, howe & in
what man such cõtinual claim shalbe made, &
to learn this, iij thigs ther be to be vnderstood.
¶ The first thinge is, if a man haue cause to
enter in any landes or tenemẽts in diuers tow-
nes within one shire, if he enter in any parcell
of the lands or tenemẽts that be in one towne
in the name of al the landes or tenementes to
which he hath right to enter within all the
townes in the same shire, by such entre he hath
as good possession & seisin of such lands or tene
ments whereof he hath title to enter, as if hee
had entred into euery parcell, and this semeth 418
great reasõ, for if a man will enfeoffe another
without dede, of certein lãds or tenemẽts that
he hath in many townes within one shire, and
he will deliuer seisin to the feoffee of parcel of
the tenements within one towne in the name
of al the lands & tenementes that hee hath in
the same towne, & in al the other townes &c.
all the said tenements &c. shall passe by force
of the saide liuerie of seysin to him to whom
such feffemẽt in such maner is made. And yet

he to whom such liuery of seisin is made hath no right to all the lande & tenemẽts in all the townes, but by reasõ of the liuery of seisin made of parcel of the lands or tenemẽts in one towne: A multo fortiori. It semeth good reasõ þ whẽ a man hath title to enter into lãds or tenemẽts in diuers townes wᵗin one shire before any entrie by him made, þ by the entre of him made in parcel of the tenemẽts in one towne in þ name of al þ lãds & tenemẽts to the which he hath title to enter wᵗin þ same shire, this is a seisin of al in him, & by such ẽtre he hath possessiõ & seisin in deede, as if he had ẽtred into euery peel &c.

419 The second is to vnderstand, that if a mã hath title to enter into any lãds or tenements, if he dare not enter into the same landes or tenements, nor in any parcel thereof for doubt of beating, or for doubt of maiming, or for doubt of both, if he go & approch as nigh þ tenemẽts as he dare for such doubt, & claime by words, the tenements to bee his, incontinent by such claime he hath a possession & seisin in the tenementes, as well as if hee had entred in deede, though he had neuer possession or seisin of the same landes or tenemẽts before the said claime. And that the law is such, it is well proued by a ple of an Assise in the booke of Assises An. 38. E. 3. The tenure of which entreth in this forme.

420 In the County of Dorset before the Justices it was founde by verdit of Assise, that the pleintife which had right by discent of he-

of heritage, to haue the tenemẽtes put in plaint at the time of the death of his aūcestor which was dwelling in the towne where ỹ tenemẽts were, & by ward claimeth the tenementes amõg his neighbors, but for doubt of death hee durst not approche vnto the tenemẽts, but bringeth an assise, & vpon the matter found, it was awarded that he should recouer.

¶ The iij. thing is to vnderstãd within what 421
time & by what time the claime ỹ is said cõtinual claime shal serue & helpe him ỹ made the claime & his heir. And as to this it is to wete, that he ỹ hath title to enter, when he wil make his claime, if he dare approch vnto ỹ land, thẽ it behoueth him to go vnto the land, or to parcel of it, and make his claime. And if he dare not approch vnto the lãd for dread of beating, maiming or death, thẽ it behoueth him to go, & to approche as nigh as he dare toward the lãd or parcel therof, & make his claime. And if his 422
aduersary that occupieth the land, die seised in fee, or in fee taile within a yere and a day after such claime made, by which the tenements discend vnto his sonne as heire vnto him, yet may he that made the claime, enter vpon the possession of the heires. But in this case after the 423
yere & the day that such claime was made, yf none other claime be made, if the father then die seised ỹ morow after the yere & the day, or at another day after &c. then may not he that made the claime enter. And therefore if he that made the claime, will be sure alway that hys entre

shall not be taken away by such discēt, it behoueth him that within the yere & the day after ꝯ first claime, to make another claime in ꝯ forme aforesaid. And within the yere & the day after ꝯ second claime, to make the third claime in the sāe maner, & within the yere & the day after ꝯ third claime, to make another claime &c. that is to say, to make another claime within euerie yere & day next after euery claime made during the life of his aduersary, & then at what time ꝯ his aduersarie die, his entre shal not be takē away by discēt. And such claime made in such maner is most cōmonly taken & called cōtinuall claime of him that made the clayme. But yet in case aforesaid where his aduersary dyeth within the yere & the day next after ꝯ first claime, this is in the lawe a continuall claime, in so much ꝯ his aduersary died within ꝯ yere & ꝯ day after the same claime, for it is no nede for him ꝯ made the claime, to make any other claime, but at what time that he wil within ꝯ same yere & the day &c.

¶ Also if his aduersary be disseised within ꝯ yeare & day after the clayme, & the disseysour dieth thereof seised within ꝯ yere & the day &c. This dying seised shall not hurt him ꝯ made claime, but that he may enter &c. For who soeuer he be that dieth seised within the yere & the day after such clayme, that shall not hurt him that made the claime, but that he may enter though there were many dyings seysed & many discents within the yere & the day &c.

¶ Also

¶ Alſo if a man be [illegible] 426 ſeiſed within the [illegible] after the diſſeiſin done, [illegible] diſcend to his heire, in th[illegible] of ẏ diſſei[illegible] is taken away, [illegible] the day ẏ ſhould helpe ẏ diſſeiſe[illegible] not be taken frō ẏ time [illegible] to him, but [illegible] ẏ claime [illegible] made in [illegible] aforeſaid, & [illegible] diſſeiſee for to make [illegible] &c. in [illegible] time as he may after ẏ diſ[illegible]

¶ Alſo, [illegible] a diſſeiſour occupy the land by 427 xl. yeres without any claime [illegible] ſeiſes &c. & [illegible] death of the [illegible] aforeſaid, if [illegible] a day after ſuch [illegible] &c. the entre [illegible] this it ſhalbe [illegible] claime that hath [illegible] to [illegible] he heareth ẏ his [illegible] ſayes [illegible] to make his claime &c.

¶ Alſo, as it is ſaid in the caſes put before 428 where a man hath title to entre becauſe of a diſſeiſin &c. The ſame law is [illegible] a man hath right to entre becauſe of the title &c.

¶ Alſo, in the ſaid preſidents may ye knowe 429 by [illegible] two thinges. One is when a man hath title to entre vpon a tenant in taile, if he make any ſuch claime vnto the land &c. Then is the ſtate of the taile defeated, for that claime is as an entre made by him, [illegible] of the ſame eſ-

ſtat

fect in the law as if he were vpō the same tenements, & had entred in the same tenements as is aforesaid. And then when the tenant in taile immediatly after such claime continueth his occupatiō in ỹ tenemēts, this is a disseisin made of the same tenements vnto hym that made the claime. Et sic per consequens, the tenāt then hath fee simple &c.

430 ¶ The seconde thing is, ỹ as oft as he ỹ hath right to enter maketh such claime, & this notwithstanding his aduersary cōtinueth his occupation &c. so oft ỹ aduersary doth wrōg & disseisin to him that made ỹ claime. And for this case so often may he that made the same claime for euery such wrong and disseisin made vnto hym, haue a writ of trespas. Quare clausum suū fregit &c. to recouer his dammages &c.

431 Or he may haue a writ vpon the statut of king Richard the secōd, made the v. yere of his raigne supposing by his writ, ỹ his aduersarye hath entred into the lāds or tenements of him that made ỹ claim where his entre was not geuen by the law &c. & by such accion he shal recouer his dāmages &c. And if the case be suche that the aduersary occupy the tenemēts with force & armes, or with a multitude of people at the time of such claime &c. Thē may he that made the claime, for euery such time haue a writ of Forcible entre & recouer his treble dāmages.

432 ¶ Also. here it is to see if the seruant of a mā that hath title of entre, may by the commaundement of his master, make continual clayme

for

for his master in his name, & it seemeth that in 433
some cases he might do this, for if hee by his
cõmaũdemẽt come to any parcel of the land, &
there maketh clayme &c. in the name of hys
master, this claime is good for his master, for
this that he hath done al that it behoueth his
master to do in such case &c.

¶ Also, if a master say vnto his seruant ỹ he 444
dare not go into the lãd nor into any parcel of
the lande for to make his claime &c. & dare not
approch more nigh vntõ the same lãd, saue to
such a place called Dale, & commaundeth hys
seruãt to go to the same place of Dale. & there
to make a claime for him &c. if the seruaunt do
&c. this semeth as good claime for his master,
as if he had ben there in his owne person, for
ỹ the seruaunt did al ỹ his master durst do &
ought to do by the law in such case.

¶ Also, if a man be so sicke or so lame, that he 434
may not in any maner come to the land, nor to
any parcel of the same, or if there bee a recluse
that he may not because of his order go out of
his house &c. if such a maner of pson cõmaũd
his seruaunt to go and make clayme for hym
&c. and the seruaunt dare not go to the lande,
nor to any parcel therof for doubt of beatinge,
mayme, or death, and for that cause suche ser-
uant commeth as nigh to the land as he dare
for suche dreade, and maketh hys clayme &c.
for his master. it seemeth that such clayme for
his master is good and strong in law, for els
his master should be in two great mischief, for

It may wel be that such a person ꝑ is sicke or lame, or recluse, cannot finde any seruant that dare go vnto the land, nor to any parcel of it to
435 make the claime for him &c. But if ꝑ master of such a seruant be in good health, & may and dare wel go to the tenements, or to parcel of it to make his claime for him &c. if such a master cõmaunde his seruant to go to some parcell of the land & make claime for him &c. And when the seruant is in going to do the commaũdemẽt of his master, he heareth by the way such things that he dare not go to any parcell of ꝑ lande for to make any claime for his master, & for that cause he goeth as nigh vnto the lande as he dare for doubt of death, & there he maketh claime for his master in the name of his master &c. It semeth that ꝑ doubt in ꝑ law in such case shalbe if such claim ensasle his master or not, for this ꝑ ꝑ seruãt did not all that his master at the time of cõmaundement durst to haue done.

436 ¶ Also, some haue said, that where a mã is in prison & is disseised, and the disseisour dieth seysed, duringe the time that the disseisee is in prison, by which tenements discend to ꝑ heire of the disseisour, they haue said that this shal not hurt the disseisee that is in prison, but that he may wel enter notwithstãding such discẽt, for this that he may not make cõtinual claime when he was in prison. And also if such a one that is in prison bee outlawed in an accion of Dett or Trespas, or in appele of roberye &c.

hee

he shal reuerse such outlawry by writ of Error &c. because he was in prison at the time of the outlawry against him pronounced.

438 ¶ Also, if a recouery be had by disclt against such a one ꝑ is in prisō, he shal auoid ꝑ iudgment by a writ of Errour, for this ꝑ he was in prison at the time of such default made &c. and because ꝑ such matters of record shal not hurt them ꝑ be in prisō, but ꝑ it shalbe reuersed &c. A multo forciori, It seemeth ꝑ a matter in deede, ꝑ is to say, such discent had when hs was in prison, shal not hurt him &c. specially for this ꝑ he may not go out of prisō to make continual claime &c.

439 ¶ And in the same maner it seemeth to them where a man is out of ꝑ realme in ꝑ kīgs seruices for busines of the realme, & if a man bee disseised when he is in the seruice of the king, ꝑ such discent shal not hurt the disseisie, but for this ꝑ he might not make cōtinual claime &c. it semeth vnto them ꝑ when hee commeth againe into England, he may enter again vpon the heire of ꝑ disseisor &c. For such a mā shall reuerse an outlawry ꝑ is pronounced against him during the time ꝑ he is in seruice &c. Ergo a multo forciori, yee shal haue aide by the lawe in the other case &c.

440 ¶ Also, other haue said, that if a mā be out of the realme, though he be not in the kings seruice, if such a man being out of the realme bee disseysed of landes or tenementes within the realme, and the disseisour dye seised &c. the disseisee

seisee beinge out of the realme, it seemeth vnto them that when the disseisee cōmeth into ỹ realme, that he may well enter vpon the heire of the disseisour &c. & this semeth vnto them for two causes.

¶ One is, ỹ he that is out of the realme, may not haue knowledge of ỹ disseysin made vnto him by vnderstanding of the law, no more thē that a thing done out of the realme may be tried within the same realme by ỹ othe of xij. mē & to cōpell such a mā to make cōtinual claime which by the vnderstāding of ỹ law cā haue no knowledge or cognisance of such disseysin made or done, this shalbe inconuenīēt: namely, when such a disseisin is done vnto him, when he was out of the realme. Also ỹ dying seised was done whē he was out of the realme, for in such case he may not by possibility after the cōmon prescription make no continuall clayme, but otherwise it shalbe if the dysseisee were within ỹ realm at ỹ time of the disseisin, or at the time of the dying seised of the disseisor &c. Another matter they alleaged for a proofe, that before the statute of king Ed. the third, made the 34. yere of his raigne, by which statute nō claime is out &c. ỹ lawe was such, ỹ if a fine were leuied of certein lands or tenements, if any that was a stranger to the fine had right to haue & to recouer the same lāds or tenemēts, if he came not & made his clayn therof within a yere and a day next after the fine leuyed, he shalbe barred for euer. Quia dicibatur finis

441

quod

quod finem litibus iuponebat. And that the lawe was such, it is proued by the statut of Westm. the seconde. De donis conditionalibus, where it speaketh, if the fine be leuied of tenemẽts geuen in the taile &c. Quod finis ipso iure sit nullus, nec habeant heredes aut illi ad quos spectat reuersio (licet plene ætatis fuerint in Anglia & ext̃ prisonã) necesse apponere clameũ suum. So it is proued that if a straunger that hath right vnto the tenements, if he were out of the Realme at the time of the fine leuied &c. shal haue no dãmage though that such fine was matter of recorde, by greater reason it semeth vnto them that a disseisin & discent ꝑ is matter in dede, shal not so greeue him that was disseised whẽ he was out of ꝑ realme at the time of the disseisi, & also at the time ꝑ the disseisor dyed seised &c. but ꝑ he may wel enter notwithstanding such discent.

Also enquire if a man be disseised, & he arraine an assise against the disseisor. & the recognitors of the assise challẽge for the plaintif, & ꝑ Iustices of assise will be aduised of their iudgements vntill the next assise &c. & in the meane season the disseisour dieth seised &c. if the saide sute of the assise shalbe taken in lawe for the disseisee a continual claime, in so much that no defaut was in him &c. 442

¶ Also, enquire yf an Abbot of a monastery die, & during the time of vacatiõ, a mã wrongfully entreth in certeine parcels of land of the monastery, clayming the lande vnto hym and his heires, and of that estate dyeth seyled, and 443

the

the land discendeth vnto his heires, and after that an Abbot is chosen, & made Abbot of the monastery, a quēstiō is if the Abbot may ēter vpon the heire or not, And it seemeth to some that the Abbot may wel enter in this case, for this ꝑ the couent in time of vacation was no person able to make continual claime, for noe more then they be personable to sue an accion, no more be they personable to make continual claime, for the couēt is but a dead body without head, for in time of vacation a grāt made vnto thē is voide, & in this case an Abbot may not haue a writ of Entre vpon disseisin against ꝑ heire, for this ꝑ he was neuer disseised. And if ꝑ abbot may not ēter in this case, thē he shal be put vnto his writ of right, ꝑ which shalbe to hard for the house, by which it seemeth to them ꝑ the Abbot may wel enter &c. Quęre de dubijs, legem bene discere si vis, querere dat sapere que sunt legitima vere.

¶ Releases.

444 RElease be in diuers maners, that is to say release of right ꝑ a man hath in landes or tenements, and release of accions reals & personels and of other thinges, ¶ Release of all the right that a man hath in landes or tenements &c. is cōmonly made in such fourme, or to such

445 effect. Nouerint vniuersi per presentes me A. de B. remisisse, relaxasse, & ónino de me & heredibus meis quiet clamasse B. de D. totū ius, titulū, & clameū, que habui, habeo, vel quouismodo in futurū habere

potero

potero de & in vno meſuagio cum pertiñ in F.

And it is to be vnderſtood, that theſe wordes (remiſiſſe & quiet' clamaſſe) bee of ſuch effect as theſe wordes, relaxaſſe &c. & alſo theſe wordes 446
which be cõmonly put in ſuch dedes of releaſes &c. that is to be vnderſtood. Que quouiſmodo in futurũ habere potero, be as wordes voyd in the lawe, for no right paſſeth by a releaſe, but the right that ỹ releſſor hath at the time of his releaſe made, for if it be father & ſonne, & the father be diſſeiſed, & the ſonne liuinge, his father releaſeth by his dede to the diſſeiſor al ỹ right that he hath or may haue in the ſame tenemẽts without clauſe of warrãtiſe &c. & after the father dieth, the ſonne may lawfully enter vpon the poſſeſſiõ of the diſſeiſor, for this that he had no right in the land liuing his father, but the right diſcẽded vnto him by diſcẽt after the releaſe made by the death of his father. Alſo in 447
a releaſe of al the right that a mã hath in certaine lands, it behoueth vnto him to whõ the releaſe is made in ſuch caſe that he hath a free hold in the lands in dede or in the lawe at the time of ỹ releaſe made, for in euerie caſe where he to whom the releaſe is made, hath a free holde in deede or in lawe at the time of the releaſe made &c. the releaſe is good. Frankteſſe 448
in lawe is, as if a man haue diſſeiſed another, & thereof dyeth ſeyſed, by the which the tenemẽts diſcend vnto his ſonne. howbeit that hys ſonne enter not in the tenements, yet he hath a franktenement in the lawe, which by force of

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the diſcent is caſt vpon him, & therefore the re-
leaſe made is good ynough. And if hee take a
wife ſo being ſeiſed in the lawe, howbeit that
he neuer enter in deede, & dieth, his wife ſhall
449 haue therof her dower. And in ſuch caſe of re-
leas of al his right, howbeit that he to whō ỹ
releaſe is made, ne hath any thing in the frāk-
tenemēt neither in deede nor in lawe, yet the re-
leaſe is good ynough, as if ỹ diſſeiſor haue left
lād ỹ he had by diſſeiſin to another for terme of
his life, ſauing the reuerſiō to him, if the diſſei-
ſy or his heirs releas vnto ỹ diſſeiſor al ỹ right
&c. that releaſe is good, for that that he to whō
the releaſe is made, had in him a reuerſiō at ỹ
450 time of the releaſe made. In the ſame maner if
a leaſe be made to a mā for terme of life, the re-
mainder vnto another for terme of life, the re-
mainder vnto the third in taile, the remeinder
vnto the fowerth in fee, if a ſtrāger that hath
the right vnto the land releas al his right vnto
any of thē in, ỹ remainder, ſuch releas is good,
for this that euery of thē hath a remainder veſ
451 ted in him ſelfe, yet if the tenaunt for terme of
life be diſſeiſed, & after he that hath right (the
poſſeſſiō being in the diſſeiſor) releas vnto one
of thē to whom the remainder was made, all
his right &c. That releaſe is voide, for that,
that he ne had in him no remainder in dede, but
all only a right of a remainder at the time of
452 the releaſe made. And note, that euery releaſe
made to him that hath a reuerſion or remayn-
der in deede, ſhal ſerue & helpe them that haue

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the franktenement as well as them to whom the releaſe is made, if the tenāt haue ỹ releaſe in his hand &c. In the ſame manner a releaſe made to a tenant for terme of life, or to a tenāt in the taile, ſhall enure vnto them in the reuerſion or to them in the remainder, as well as to the tenāt of ỹ franktenement, and ſhall haue a great aduātage of that, if that they may ſhew it. And if there be lord & tenāt, & the tenant is diſſeiſed, & the lord releaſeth vnto the diſſeiſſee al the right that he hath in the ſeignory, or in the land, the releaſe is good, & the ſeignorie is extinct. And if the goods of the diſſeiſye bee taken, & of them the diſſeiſy ſueth a Replegiare againſt the lord, he ſhall compell the lord to auow vnto him, & if he wil auow vpō the diſſeiſour, then vpō the matter ſhewed, ỹ auowrie ſhalbe abated, for the diſſeiſy is tenaunt to them in right & in lawe.

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Alſo if land be geuen to a man in the taile reſeruinge vnto the donour & his heires a certeine rent, if the donee bee diſſeiſed, & after the donour releaſeth to the donee al the right that he hath in the lād, and after the donee entreth into the land vppon the diſſeyour, in this caſe the rēt is gone, for this that the diſſeiſy at the tyme of the releaſe made was tenant in right, and in lawe vnto the donour, and the auowrie of fine force ought to bee made vppon him by the donour for the rente behynde &c.

But yet nothing of the right of the land, ỹ is to ſay, of the reuerſion, ſhall paſſe by ſuch releaſe

leaſe, for this that the donee to whom the re-
leaſe was made then had nothing in the land,
but onely a right, & ſo the right of the land may
456 not paſſe by ſuch releaſe of the donee. In the
ſame maner it is if a leaſe bee made to one for
terme of life, reſeruinge to the leſſour & to hys
heires certain rent, if the leſſee be diſſeiſed, and
after the leſſour releaſeth to the leſſee and to
his heires, & after the leſſee entreth, howbeit
that in the caſe the rent is extinct, yet nothinge
457 of the right paſſeth &c. Cauſa qua ſupra. But
if it be very lord and very tenaunt, and the te-
nant maketh a feoffement in fee, the which fe-
offee neuer became tenant to the lord &c. if the
Lorde releaſe to the feoffour all his right &c.
that releaſe is voide, for this that the feoffour
hath no right in the land, and he is no tenaunt
in right to the lord but onely tenant as for the
auowry to be made, & he ſhal neuer cõpel the
lord to anowe vppon him, for the lord may a-
458 nowe vppon the feoffee if hee will. Other-
wiſe it is where the very tenaunt is diſſeyſed
as in caſe aforeſaid, for if the very tenant that
is diſſeiſed holdeth of the lord by knights ſer-
uice & dieth. his heires beinge within age, the
lord ſhall haue & ſeiſe the warde of the heire.
And ſo he ſhall not haue the ward of the feof-
four that made the feoffement in fee, and ſo it
is a great diuerſitie betwene theſe two caſes.

¶ Alſo if a manne enfeoffe another in hys
102 lande vppon truſt, and to the intent that hee
ſhall

shal performe his last will, and the feoffour occupyeth the same at the will of his feoffees, and after the feoffees release by their deede vnto the feoffour all the right &c. This hath ben in question if such release bee good or not, and some haue said that such release is good, for this that no priuitie was betweene the feoffees and their feoffour, in so much that no lease was made after such feoffement by the feoffees to their feoffour to holde at their will &c. and some haue said the contrary, & ꝑ for two causes. One is, that when such feoffments are made 463
vpon confidence, to performe the will of the feoffour, that it shalbe vnderstood by the law ꝑ the feoffour by & by ought to occupy the lande at the will of his feoffees, & so it is such maner of priuitie betweene them as if a man make a feoffment to another person, & they not met vpō the feoffement will say and graunt that the feoffee shal occupy the land at their will &c. An 464
other cause they alledge, that if such lande bee worth xl. s. by yeare &c. Then such a feoffour shalbee sworne in assises & in other inquestes, in pleas reals and also in pleas personels, of what great summes soeuer that the plee rikes will declare &c. And this is by the cōmon lawe of the land. Ergo this is for a great cause and the cause is that the lawe will that such feoffours and their heires ought to occupie &c. And to take thereof the rent & all the profits, and all manner of yssues and reuenues &c. as though the tenements were their owne

Without interruption of feoffees, notwithſtã-
ding ſuch feoffements. Ergo the ſame lawe ge-
neth a priuity betwene ſuch feoffours, & their
feoffees vpon confidence &c. For which cauſes
they haue ſayd that the releaſe made by ſuch
feoffes vpõ confidẽce to the feoffour, or to his
heires &c. ſo occupying the land &c. ſhalbe good
ynough &c. And this is the better opinion as
it ſemeth. Alſo releaſes after ỹ matter in dede
ſometime haue their effect by force to enlarge
the eſtate of them, in whom the releaſe is
made, as if I let certayne lande to a man for
terme of yeares, by force whereof hee is poſ-
ſeſſed, & I releaſe vnto him all the right that
I haue in the land without more wordes ſet
or put in the deede, and delyuer vnto him the
deede: Then hee hath eſtate but for terme of
hys lyfe, and the cauſe is for this, that when
the reuerſion or the remainder is in a man the
which will enlarge by his releaſe the eſtate of
the tenant &c. hee ſhall haue no greater eſtate,
but in the maner and fourme, as if ſuch a leſ-
ſour were ſeyſed in fee, and will by his deede
make eſtate to one in a certeine fourme &c. and
delyuer vnto him ſeyſin by force of the ſame
deede, if in ſuch deede of feoffement there be no
worde of inheritaunce &c. Then hee hath eſ-
tate but for terme of lyfe &c. & ſo it is in ſuch
releaſe made by him in the reuerſion, or in
the remainder, for yf I let lande to a manne
for terme of lyfe, and after I releaſe vnto him
all my right without more layinge in the re-

leaſe

leale, his eſtate is not enlarged. But if I re-
leaſe vnto him & to his heires of his body en-
gendred, then hee hath fee taile, & if I releale
vnto him & to his heires, thē if he hath fee ſim-
ple. So it behoueth in ſuch caſe to ſpecify in ỹ
deede, what eſtate hee & whom the releaſe is
made ſhal haue &c. And ſometime releaſe ſhall 466
enure to let & put ỹ right of him that maketh
the releale to him, to whō the releale is made,
As a man is diſſeiled & he releaſeth vnto the
diſſeiſour al ỹ right that he hath. In this caſe
the diſſeiſor hath his right, ſo that where his
eſtate before was wrong, nowe by the releaſe
it is lawful & right: but note wel that when a 467
man is ſeiſed in fee ſimple of any landes or te-
nements, & another wil releaſe vnto him al the
right that he hath in the ſame tenemēts, it ne-
deth not to ſpeake of the heires of him to whō
the releaſe is made for this that he had fee ſim
ple at the time of the releaſe made: for yf the
releaſe were made to him and to his heires
for one day or for one howre, this ſhalbee as
ſtronge vnto him in the laws, as hee had re-
leaſed to him and to his heires, for when his
right was gone from him at one time by hys
releaſe without any condition &c. to him that
had fee ſimple, it is gone for euer. But where 468
a man hath a reuerſion, or a remainder in fee
ſimple at the tyme of the releaſe made, there
yf hee will releaſe to the tenaunt for terme
of yeares or for terme of lyfe, or in the
tayle, it behoueth to determyne the eſtate

that he to whō the releaſe is made ſhall haue by force of the ſāe releaſe. For this that ſuch releaſe goeth to enlarge ꝑ eſtate &c. of him to whō the releaſe is made. But otherwyle it is wher a man hath but a right vnto the land & hath nothing in ꝑ reuerſion nor in the remainder in dede. For if ſuch a man releaſe all his right to one that is tenant of the franktenemēt, all his right is gone, though that no mencīō be made of his heirs of him to whō the releaſe is made. For if I let land to a man for terme of life, if I after releaſe vnto him for to enlarge his eſtate, either it behoueth that I releaſe vnto him & to his heires of his body engendred, or to him & to his heires males of his body begotten or by ſuch ſemblable eſtate &c. or otherwiſe he hath no greater eſtate thē he had before But if my tenaut for terme of life let the ſame lād out to another for terme of the life of hys leſſee, the remainder to another in fee, nowe if I releaſe vnto him vnto whom my tenant letted for terme of life, I ſhalbe barred for euer, though that no mencion be made of his heires, for this that at the time of the releaſe made I had no reuerſion but onely a right to haue the reuerſion. For by ſuch a leaſe with a remainder ouer that my tenant made, in this caſe my reuerſion is diſcontinued & ſuch a releaſe ſhal enure vnto him in ꝑ remainder to haue aduā-tage of thys, as well as to the tenaunt for terme of life, for to that entent the tenaunt for terme of life & hee in the remaynder be as one

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tenant in the law, & be as if one tenant were ſole ſeiſed i his demeane as of fee at the time of ſuche releaſe made vnto him. Alſo if a man be diſſeiſed by two, if hee releaſe vnto one of thē, he ſhal hold his fellow out of the land and by ſuch releaſe ſhall haue ſole poſſeſſiō & eſtate in the land. But if one diſſeyſour enfeoffe two in fee, & the diſſeiſi releaſe to one of them, thys ſhal enure to both the ſaid feffees. And ỹ cauſe of the diuerſitie betwene theſe two caſes, is repugnant ynough.

¶ Alſo, if I be diſſeiſed, & the diſſeiſor is diſſeiſed if I releaſe to the diſſeiſor of my diſſeyſor, I ſhal neuer haue aſſiſe nor enter vppon his diſſeiſour, for this that his diſſeiſour hath my right by my releaſe &c. And ſo it ſemeth in this caſe that if there were twenty diſſeiſors eche after other, & I releaſe to the laſt diſſeyſor, he ſhal barre al the other of their actions, and their title. And the cauſe is as it ſeemeth, for this ỹ in many caſes when a man hath a lawful title to enter, though he eter not &c. he ſhall defeate all meane titles by his releaſe &c. But this is not in euery caſe as ſhalbe ſaide afterwarde.

¶ Alſo if a man be diſſeiſed the which hath a ſonne vnder age, & dieth & being the ſonne vnder age, the diſſeiſor dieth ſeiſed, & the land diſcendeth to the heire, and a ſtraunger abateth and after the ſonne of the diſſeiſee when he cōmeth vnto full age releaſeth all his right &c. to the abatour. In this caſe the heire of the diſſeiſour

ſour ſhal haue no aſſiſe of mordãceſter againſt the abatour, but he ſhalbe barred of the aſſiſe, for this ꝑ the abatour hath ꝑ right of ꝑ ſonne of the diſſeiſee by his releaſe, & the entre of the ſõne was lawfull &c. for this ꝑ hee was vnder age at the time of the diſcẽt &c. But if a man be diſſeiled, & the diſſeiſour maketh a feoffemẽt vpon a cõdition, ꝑ is to ſay, to yeld vnto hym certein rẽt, & for default of paiemẽt a reentre &c. if the diſſeiſee releaſe to ꝑ feffee vpon cõdition, yet this amendeth not the eſtate of the feoffee vpõ condition, for notwithſtanding ſuch releaſe, yet his eſtate is vpon cõdition as it was beefore. In the ſame manner it is where a man is diſſeiſed of certeine lande, and the diſſeiſour graunteth a rent charge out of the ſame land, though that after the diſſeiſee releaſeth vnto the diſſeiſour &c. yet the rent charge abideth in his force. And the cauſe is in theſe two caſes, ꝑ a mã ſhal haue none aduantage by ſuch releaſe that ſhalbe againſt hys owne ꝓper acceptãce, & againſt his owne grãt. And though ꝑ ſome haue ſaid that where the ẽtre of a mã is congeable vppon a tenaunt, if hee releaſe to the ſame tenaunt that this auaileth vnto the tenaunt ſo as if he had entred vpon the tenant and after enfeoffed him &c. this is not true in euery caſe, for in the firſt caſe of theſe two caſes if the diſſeiſee in fee enter vppon the feoffee vpon condition, and after enfeoffeth him, then the condition is all put aſyde and voyde. And in the ſeconde caſe if the diſſeiſee enter and enfeoffee him that graũted the rent charge, then

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is ꝑ rēt charge auoided. But it is not auoided by any ſuch releaſe ẅan entre made ꝛc. Alſo if a mā be diſſeiſed by a child ẅin age ꝑ ẅhich alieneth in fee, & the alienee dieth ſeyſed, & his here entreth (beig ꝑ diſſeiſor ẅin age.) Now it is in the electiō of ꝑ diſſeiſor to haue a ẅrit of Dū fuit infra etatē, or a ẅrit of ryght againſt the heire of the alienee, & ẅhich ẅrit ſoeuer he taketh of thē, he ought to recouer by the laẅe. And alſo he may enter into the lande ẅithout any recouery, & in this caſe the ētre of the diſſeiſee is takē away, but in this caſe if the diſſeiſee releaſe his right to ꝑ heire of the alienee & after the diſſeiſour bringeth a ẅrit of ryght againſt the heire of the alienee, and he ioyneth the myſe vppon the cleare right ꝛc. the graūd aſſiſe ought by the laẅe to find that the tenāt hath more cleare right ꝛc. then hath the diſſeiſour, for this that the tenaunt hath the ryght of the diſſeiſee, & his releaſe ẅhich is more ſufficient & more cleare right then the right of the diſſeiſour, for by ſuch releaſe, al the right of the diſſeiſee paſſeth vnto the teſit, & is in the teſit. And to this ſoe haue ſaid, ꝑ i ſuch caſe ẅhere a man hath right to lāds or teneīts (but hys entre is not laẅful) if he releaſe vnto the teſit ꝛc. Then ſuch releaſe ſhal enure by ẅay of extinguiſhmēt. And vnto this it may be ſaide, ꝑ this is trueth vnto him that releaſeth, for by his releaſe he hath diſmiſſed himſelfe cleane of his right as to his ꝑſon. But yet the right ꝑ he had may ẅel paſſe & go vnto ꝑ teſit by his

releaſe, for it ſhould be inconuenient ỹ ſuch an auncient right ſhould be extinct al maner wy &c. for it is cõmõly ſaid ỹ right may not die. But a releaſe ỹ goeth by the way of extinguiſhmẽt againſt al perſons, is where he to whõ ỹ releaſe is made, may not haue this ỹ vnto him is releaſed. As if there be lord & tenant & the lorde releaſeth vnto the tenant al the right that he hath in the lordſhip, or all the right ỹ he hath in ỹ lãd &c. ſuch a releaſe goeth by way of extinguiſhment againſt al perſons, for this, that the tenant may not haue the ſame of him ſelf. In ỹ ſame maner is a releaſe made to the tenãt of the lãd of a rent charge, or of a cõmon paſture, for it is ỹ the tenãt may not haue ỹ, that vnto him is releaſed &c. & ſuch releaſes go away by extinguiſhment againſt all perſons. ¶ Alſo, to proue ỹ the graũd aſſiſe ought to paſſe for the remaundant in the caſe aforeſaid, I haue hard often in the lecture vpon the ſtatute of weſtm the ſeconde that beginneth. In caſu quando vir amiſerit per defaltam in tenemẽtum quod fuit ius vxoris ſue &c. that at the cõmon lawe before that ſtatute, if a leaſe were made to a tenant for terme of life, the remainder ouer in fee, & a ſtrãger by a fained accõ recouer againſt the tenãt for terme of life by default, & after the tenant dieth, he in the remainder had no remedy before the ſtatute, for this, that he had no poſſeſſion of ỹ land, but if he in the remaunder had entred vpon the tenant for terme of life, and diſſeiſed him, and after the

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tenant entreth vpon him, & after the tenaunt for terme of life dieth by ſuch recouery had by defaut, and dieth: now he in the remaynder may well haue a writ of right against him ꝑ recouered, for this that the mise ſhalbe ioined only vpō the clere right. And yet in this caſe the ſeiſin of him in ꝑ remaynder was defeated by the entre of ꝑ tenaunt for terme of life. But peraduenture ſome will argue & ſay, that he that haue no writt of right in this caſe, for this ꝑ when the mise is ioined in ſuch maner, that is to ſay, if the tenāt haue more clere right to the land in the maner as it is holden, then the demaūdāt hath in the maner as he demaūdeth. And for this that the ſeiſin of the demaūdant was defeated by the entre of the tenaunt for terme of life, then he hath no right in the maner as he demaundeth. Vnto this it may bee ſaid that theſe wordes (Modo & forma prout &c.) in many caſes be wordes of ꝑ manner of pleadinge, and no wordes of ſubſtance. For if a man bring a writ of entre. (In caſu prouiſo,) of alienation made by ꝑ tenāt in dower to his diſenheritāce, & pleadeth of the alienation made in fee, & the tenant ſaith that hee eliched not in the maner as the demaūdant hath declared, & vpon this they be at iſſue, and it is founde by verdit ꝑ the tenaunt alened in the taile, or for terme of anothers life, the demaūdant ſhal recouer, & yet the alienation was not in the maner as the demaūdant hath declared.

¶ Alſo, if there be Lord and tenant, and the tenant

tenant holdeth of the Lord by fealty only, and the lord diſtraineth ỹ tenãt for rẽt, & the tenãt bringeth a writ of treſpas againſt his lord for his cattel ſo take, & the lord pleadeth ỹ the tenãt holdeth of hi by fealty & certein rẽt, & for the rẽt behind he came to diſtrain &c. And demãudeth iudgement of ỹ writ brought againſt hi. Quare vi & armis &c. And the other ſaieth ỹ he holdeth not of him in the maner as he ſuppoſeth, & vpon this they be now at iſſue, & it is found by verdit that hee holdeth of him by fealty tantum. In this caſe the writ ſhal abate, & yet he held not of the lord in the maner as ỹ lorde had ſaide, for the matter of the iſſue is, whether the tenãt holdeth of him or not. For if he hold of him, though the lord diſtraine for other ſeruices that hee ought not to haue, yet ſuch a writ of treſpas, Quare vi & armis &c. lieth not againſt the lord but ſhal abate.

¶ Alſo, in a writ of treſpas of beating, or of goods taken, if the defendaunt plede not culpable in the maner as the plaintife ſuppoſeth, & it is founde that the defendaunt is culpable in an other towne, or at an other day then the plaintife ſuppoſeth, yet he ſhall recouer. And in many mo other caſes theſe wordes, that is to ſay, in the maner as the demãudant or the pleintife hath ſuppoſed, bee no matter of ſubſtance of the iſſue, for in a writ of right where the miſe is ioined vpon the clere right, it is as much to ſay and to ſuch effect, that is to wite, whether hath the more right, the tenaunt or

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the demaũdant to the thing ſo demaũded &c.

¶ Allo, if a man be diſſeiſed and the diſſeyſor dyeth ſeiſed &c. and his ſonne entreth by dyſcent, and the diſſeiſee entreth vppon the heire of the diſſeiſour, the which entre is a diſſeiſin &c. if ỹ heire bring an aſſiſe or a writ of ryght againſt the diſſeiſee, he ſhal be barred. For this that when the graunde aſſiſe is ſworne, their othe is vpon the clere right, and not vpon the poſſeſſiõ &c. for if the heire of the diſſeiſour had brought an aſſiſe of nouel diſſeiſi, or a writ of entre in nature of aſſiſe, & recouered againſt the diſſeiſee, & ſued execution, yet may the diſſeiſee haue a writ of entre in the Per againſt him of the diſſeiſin made vnto him by his father, or he may haue againſt the heire a writ of right, But if the heire ought to recouer againſt the diſſeiſee in ỹ caſe aforeſaid by a writ of right, then al his right ſhalbe clerely gone, for thys ỹ a final iudgement ſhould be geeuen againſt him, which ſhould be againſt reaſõ where the diſſeiſee hath more clere right &c. And knowe ye my ſonne, that in a writ of right after this that the fower knights be choſen in the graũd aſſiſe, then there is no greater delay then in a writ of Formedõ after this ỹ the parties bee at an iſſue &c. & if the iuſe be ioyned vpõ battaile, then there is leſſe delay.

¶ Allo, a releaſe of al the right &c. in ſõe caſe is good made vnto hym that is ſuppoſed tenaunt in the lawe though he haue nothing in the tenementes, as in a Precipe quod reddat,

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If the tenāt alien the land hanging the writ, & after ꝑ demādant releaſeth to hī al his right, that releaſe is good, for this that he is ſuppoſed to be tenant by the ſuit of the demādant, & yet he hath nothing in the lande at the time of the releaſe made. In ꝑ ſame maner it is if in a Precipe quod reddat, the tenant bouche, & the bouchee enter into the garraunty, if after the demaūdant releaſe to the bouchee al his right &c, this is good ynough, for this ꝑ the bouchee after this that he hath entred in the garrātie is tenant in law to the demaūdant.

¶ Alſo, as to releaſes of accions reals & accions perſonels, it is ſo that ſome accions bee mixt in the realti: and in the perſonalty, as yf an accion of waſt be ſued againſt the tenaunt for terme of life, this action is in the realty for this that the place waſted ſhalbee recouered. And alſo it is in the perſonaltie for this that ꝑ treble dāmage ſhalbee recouered for ꝑ wrōg & waſt done by the tenaunt, & for this in thys acciō a releas of acciōs real is a good plē bar, & ſo is a releas of accions perſoneis. In the ſame maner it is in aſſiſe of nouel diſſeiſin, for this ꝑ it is mixt in the realty & in the ꝑſonaltie. But if ſuch aſſiſe be arrained agaynſt the diſſeiſour, the tenant of the diſſeiſor may plede a releaſe of al accions perſonals for to barre the aſſiſe but not releaſe of accions reals, for none ſhal plede a releaſe of accions reals in aſſiſe, but the tenants &c.

¶ Alſo, in ſuche accyons that ought to bee

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lued againſt the tenaunt of the frankteneme̅t, if the tenaunt haue a releas of al actions reals of the demaundant made vnto him before ỹ writ purchaſed, & he pleadeth it, this is a good plee for the demaũdant to ſay, that he that pleadeth that plee, had nothing in the frankteneme̅t at time of ỹ releale made for that he had no cauſe to haue action real againſt him.

¶ Alſo in ſuch caſe where a man may enter in lands or teneme̅ts, he may haue of this an actiõ real, which is geuẽ vnto him by the laſw againſt the tenaunt. As in this caſe the demaundant releaſe to the tenaunt al maner actions reals. yet this taketh not away ỹ entre of the demaundant, but the demaundaunt may well enter, notwithſtandinge ſuch releaſe. for this that nothing is releaſed but the actiõ &c. In the ſame maner it is of things perſoneis. As if a man wrongfully take my good, if I releaſe vnto him al actions perſoneis, yet I may by the laſwe take my goods out of hys poſſeſſion.

¶ Alſo if I haue cauſe to haue a writ of Detinue of my goods againſt another though that I releaſe vnto him for al actions pſoneis, yet I may take my goods out of his poſſeſſion, for this that no right of goods is releaſed to him but onely the action &c. Alſo if a man be diſſeyſed, and the diſſeyſour maketh a frofſement vnto dyuers perſons to his vſe, and the diſſeiſour continually taketh the pfoũtes &c. and the diſſeyſy releaſeth vnto him al actions

reals

reals, and after he ſueth againſt him a writ of Entre in nature of aſſize, becauſe of the ſtatute, for this that hee taketh the profites. Enquire how the diſſeiſour ſhalbe holpen by the ſaid releaſe, for if hee will plede the releaſe generally, then the demaundant may ſay that he had nothing in the frankitenement at the time of the releaſe made, and if he plede the releaſe ſpecially, thē it behoueth him to knowledge a diſſeiſin, & then may the demaundant enter in the land &c. by his conſiance of the diſſeiſin &c. But peraduēture by ſpecial pleadinge he may be barred of the action that he ſueth &c. though that the demaundant may enter &c.

¶ Alſo if a man ſue appele of felony of the death of his auncеſtor againſt another, though the appellant releaſe vnto the defendāt al maner actions reals & ſponels, this ſhal not help the defendant, for this that this appell is not an action real, in ſo much that the appellaunt ſhal not recouer any realtie, nor ſuch appell is no action perſonal. In ſo much that the wrong was vnto his auncеſtor & not vnto him, but if he releaſe to the defendāt al maner of actions, then it ſhalbe a good barre in appele, and ſo a man may ſee that a releaſe of all maner of actions, is better then a releaſe of actions reals & perſonals &c.

¶ Alſo in appele of robbery if the defendant will plede a releaſe of the appellant of all actions perſoneis, this ſeemeth no plee, for an action of appele where the appellant ſhall haue

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iudgement of death &c. is more high then an action perſonal, and it is not properly ſaid an action perſonal, and therefore if the defendant will haue a releaſe of the appellaunte to barre him of the appeale, it behoueth him to haue a releaſe of al maner of appeles, or a releaſe of all maner of actions, as it ſeemeth &c. But in appele of mathim a releaſe of al maner of actions perſonals is a good plee in barre, for this that in ſuch an action hee ſhall recouer but dammages.

¶ Alſo if a man be outlawed in an action perſonal by proces of the original, & bring a writ of error, if he at whoſe ſuit hee was outlawed will plede againſt him a releaſe of actiõs perſonals, this ſeemeth no plee, for by the ſaid actiõ he ſhall recouer nothing in the perſonalte, but al onely to reuerſe the outlawry: but a releaſe in a writ of errour ſhalbe a good plee &c.

¶ Alſo, if a man recouer det or dammage, & he releaſe to the defendaunt all manner of actiõs, yet he may lawfully ſue execution by Capias ad ſatisfaciendum, or by Elegit, or by Fieri facias, for execution by ſuch writtes may not be ſayde an action, but yf after a yere & a day the pleyntife will ſue a Scire facias to haue execution &c. thẽ it ſeemeth a releaſe of all actions ſhalbee a good plee in barre, but ſome haue thought the contrary, in ſo much that the writ of Scire facias is a writ of execution, and is to haue execution. But in ſo much that vpon the ſame writ ỹ defendãt may plede diuers matters

ters after the iudgement geue to put him frō execuciō as outlawry & diuers other &c. therfore it may well be said action &c. & I trowe that in a Scire fac' out of a fine, a releaſe of all maner of actions is a good plee in barre, but where a man hath recouered det or dāmage & it is accordyd betwene the ꝑ the plentife shal be put out frō action, the it behoueth ꝑ ꝑ plentife make a releaſe to him of al maner actions.

nota, releaſe of all demaundes

¶ Also, if a man releaſe to another al manner demaūds, this is ꝑ most best releaſe that he to whō the releaſe is made can haue, & most shall enure to his aduantage, for by such releas of al maner of demaūds, al maner of actiōs reals personels, & actions of appeles, be gone & extinct, and al maner of executions be gone and extinct. Also if a man hath title to enter in any landes or tenementes by such releaſe his title is gone. And if a man haue rent seruice or rent charge or cōmon of pasture &c. by such releaſe of all maner demaundes to the tenaunt of the land, whereof the seruice or the rent is going out, or in what lande soeuer the common bee, the seruice and rent, & the commō is gone and extinct &c.

¶ Also if a man releaſe to another al manner quarels, or all controuersies or debates betwene them. Enquire to what matter, and to what effect such wordes extend.

¶ Also, if a mā be bound by his deede to an other in a certein summe of money to pay at ꝑ feaſt of S. Michael thē next folowing &c. if the obli-

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ſege before the ſaid feaſt, releaſe to the obligour all actions he ſhalbe barred of the ſuery for euer, & yet he might haue no action at the time of the releaſe made. But if a man let lande to another for terme of yeres, to yeld at the feaſt of ſaint Michael next enſuing xl. ſhillinges & before the ſame feaſt hee releaſeth to the leſſee al actiõs, yet after the ſame feaſt he ſhall haue an action of Det for the non paiment of the xl. s. notwithſtanding the ſaid releaſe. Studye the cauſe of the diuerſitie betweene theſe two caſes.

¶ Alſo, where a man wil ſue a writ of right it behoueth that he plede of diſſeiſin of him ſelf or of his aunceſters, & alſo that the ſeiſin was in time of the ſãe king as he pledeth in his plee, for this is an auncient law vſed as it appereth by report of a certein plee, in ſuch forme as enſueth. Sir J. Barrey brought a writ of right againſt Raynold Aſhington, & demaũded certeine tenements &c. the mile was ioined in the bank, & the original & the proceſſe were ſent before Juſtices errants, where the parties came & the xij. knights were ſworne without chalenge of the parties to be alowed, for this that the election was made by aſſent of the parties with the iij. knights, and the othe was ſuch, that I ſhall ſay trouth &c. whether R. of B. haue more right to holde the tenementes that John Barrey demaũded againſt him by hys writ of right, or John to haue the tenements as hee demaundeth, and for nothing to let to

ſay the trouthe as God me helpe &c. ſwithout ſaying to their knowledg, & ſuch othe ſhalbee made in attaint, & in battaile, & in ſwaginge of law, for thoſe do euery thing vnto an end. But J. Warrey pleded of ꝑ diſſeiſin of on Raſe his anceſter in time of king hēry, & Raynold vpon the miſe ioined tendered haiſe a marke for the time &c. & vpon this Herle Juſtice ſayd to the graund aſſiſe, after that they were charged vp pō the clere right, goodmen, Raynold gaue half a marke to the king for that time to the intent that if ye find that the anceſter of John was not ſeiſed in time that the demandāt hath pleded you ſhal enquire no further vpon the right & for this ye ſhal ſay to vs whether the anceſter of John Raiſe by name was ſeiſed in ꝑ time of king Henry as he hath pleded or not, & if ye find that he was not ſeiſed in the time, ye ſhal enquire no more, & if ye finde that he was ſeiſed, then enquire farther of the right, & after the graūd aſſiſe came wt their verdit, & ſaid ꝑ Raiſe was not ſeiſed in the time of king Henry, wherby it was awarded ꝑ Raynold ſhould hold the tenements againſt him demaūded to him & to his heires quite of J. Warrey & his heires, to the remenant, & John in the mercy.

¶ Confirmation.

A Deede of cōfirmation is moſt commonly in ſuch forme or to ſuch effect. Nouerint vniuerſi &c. me A. de B. ratificaſſe, approbaſſe, et cōfirmaſſe C. de D. ſtatū & poſſeſſiō ques habeo de et in

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vno meſuagio &c. cū pertiñ in N. & in ſome caſe a dede of cōfirmation is good & vaylable, where in the ſame caſe a deede of releaſe is not good nor vailable. As I let land to a man for terme of his life, the which letteth the ſame land to a nother for xl. yeres, by force of the which he is poſſeſſed, if I by my dede confirme the ſtate of the tenant for terme of yeres & the tenaunt for terme of life dieth during the terme of yeres, I may not enter in the land during the ſāe terme, yet if I by my dede of releaſe haue releaſed to the tenant for terme of yeres in the life of the tenant for terme of life, the releaſe ſhalbe void, for this that then no priuity was betwene me & the tenāt for terme of yeres, for a releaſe is not auaylable to the tenant for terme of yeres but where a priuity is betwene him, & him ꝑ releſeth. In the ſāe maner it is if I be diſſeiſed, & the diſſeiſor maketh a releaſe to an other for terme of yeres, if I releaſe vnto the termor ꝑ is void, but if I cōfirme ꝑ eſtate of the termor that is good & effectual. Alſo if I be diſſeiſed & I confirme the ſtate of the diſſeiſour then hee hath a good and rightfull eſtate in fee ſimple though that in ꝑ deede of cōfirmation no mencion is made of his heires for this that he had fee ſimple at ꝑ time of the confirmation, for in ſuch caſe if the diſſeiſy cōfirme the eſtate of the diſſeiſor, to haue & to hold to him for terme of his life, yet ꝑ diſſeiſor hath fee ſimple & is ſeiſed in his demeine as of fee, for this ꝑ whē his eſtate was cōfirmed he had fee ſimple & in ſuch dede he may not change his eſtate wout entre

vpō him ꝛc. in the ſāe maner it is if the eſtate be cōfirmed for ẽme of a day or for terme of an hower, he hath a good eſtate in fee ſimple for ꝑ that his eſtate in fee ſimple was once cōfirmed for Cōfirmare idē eſt qd firmū facere. Alſo if two be diſſeiſors & the diſſeiſie releaſeth to the one, he ſhal hold his feloẅ out of the lād, but if the diſſeiſy confirme the eſtate of the one without more ſpeech in ꝯ dæde, ſome ſay ꝯ he ſhal not hold his feloẅ out but he ſhal hold iointly wt him, for this ꝯ nothing was cōfirmed but this eſtate that was ioint, & for this ſome haue ſaid that if ij. iointenants be: & the one confirmeth the eſtate of the other, ꝯ he hath but a ioint eſtate as he had before, but if he haue ſuch wor: des in ꝯ dede of confirmation to haue & to hold to him & to his heires al the tenemẽts whereof mẽcion is made in the cōfirmation thẽ he hath eſtate ſole in the tenements, & therefore it is a good & a ſure thing in euery cōfirmatiō to haue theſe words, to haue & to hold the tenementes ꝛc. in fee or in fee tatle, or for ẽme of life, or for terme of yeres after as the cau e or the matter is, for to the entent of ſome, if a mā let land to another for terme of life, & after hee confirmeth his eſtate by theſe wordes to haue & to hold his eſtate to him & to this heires, this cō: firmation as concerning his heires is void, for his heires cannot haue his eſtate which was but for terme of life, but if he confirme his eſtate by theſe wordes to haue the ſame land to him & th his heires this confirmation maketh fee ſimple in this caſe to him in the lande for

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this ꝯ theſe wordes to haue & to hold &c. goeth in ꝯ land & not to ꝯ eſtate ꝯ hee hath &c. Alſo if I. let certein lād to a womā ſole for terme of her life, the which taketh a huſbād, & after I cōfirme the eſtate to the huſbād & to the wife for terme of their two liues, in this caſe the huſbād holdeth not iointly wᵗʰ ꝯ wife, but holdeth in ꝯ right of his wife for term of his life, but this cōfirmatiō ſhall cure to ꝯ huſbād by waye of remaynder for terme of hys life, if hee ſuruiue his wife, but if I let land to a woman ſole for term of yeres, which taketh a huſbād, & after I cōfirme the ſtate to the huſbād & ꝯ wife, for terme of both their liues, in this caſe they haue ioint eſtate in the frāktenemēt of the land. for this, ꝯ the wife had no frankteneмt before. Alſo if a perſon of a church charge the glebe of his church by his deede, & the patron & ꝯ ordinarie cōfirme the ſame grāte, & al that is cōpriſed wᵗʰin ꝯ ſame grāt, thē ꝯ ſāe graūt ſhalbe in his ſtrēgth after ꝯ purpoſe of the ſāe grāt, but in ſuch caſe it behoueth ꝯ the patron haue fee ſimple in the auowſon, for if hee haue eſtate in the auowſon for terme of life, or in taile, then the graūt ſhall ſtād but during his life, & the lyke of the perſon that graūted it &c. Alſo, if a man let land for terme of life, which tenant for terme of life chargeth the lād with a rent in fee, & he in the reuerſiō cōfirmeth the ſame graūt, this charge is good ynough & effectual, alſo if there be a ꝑpetual chātry where of the ordinary hath nothing to meddle, nor to do, the patron of the chauntry, and the chaplayne

lame of ꝯ ſame chaũtry may charge the chaũ-trie with a rent charge in perpetuitie. Alſo in ſome caſe theſe verbes, dedi & cõceſſi, haue the ſame effect in ſubſtance, & ſhall enure to ꝯ ſũe extent as this verbe confirmaui. as if I be diſ-ſeiſed of a plough land, & after I make ſuch a deede &c. Sciant preſentes &c. quod dedi to the diſſeiſour the ſaid plough lande &c. And if I deliuer al onely the dede to him wout liuerye of ſeiſin of the land, ꝯ is a good cõfirmation, & as ſtrong in the lawe, as if he had in the dede this verbe confirmaui &c.

Alſo I let land to a man for terme of yeres, by force of which he is poſſeſſed, and after I make him a dede &c. Quod dedi vel conceſſi &c. the ſame land to haue for terme of his life, & deliuer him his dede, then by and by hee hath eſtate in the land for terme of his lyfe, and if I ſaye in the deede to haue to him and to his heires of his body engendred, hee hath eſtate in the taile, and if I ſaye in the deede to haue and to hold to him & to his heires, he hath eſ-tate in fee ſimple, for this ſhall enure to hym by force of confirmation to enlarge his eſtate. Alſo if a man bee diſſeyſed, and the diſſey-ſour dyeth ſeiſed, and his heires bee in by dyſ-cent, after the diſſeiſy, & the heire of the diſſei-ſour make ioyntlye a deede to another in fee, and liuerye of ſeyſin vppon thys is made, as to the heire of the diſſeiſour that enſealeth the deede, the tenementes paſſe by the ſame deede by waye of feoffement, and as to the diſſeyſie that enſealeth the ſame deede, this ſhall not

enure

entre by ꝯ way of confirmacion, but if the disseisie in this case bringe a writ of Entre in the (Per & Cui) against the alien of the heire of the disseisor, enquire howe hee shal pleade ꝯ deede against the defendant by way of confirmation &c. And knowe ye this my childe, ꝯ it is one of the most honorable, lawdable, and profitable things in our law, to have the science of wel pleading, in acciõs reals and personals, & for this I counsaile thee, specially to set thy courage & cure to learn ꝯ. Also, if there be lorde & tenãt, & the lord cõfirmeth the estate ꝯ the tenant hath in the tenements, yet the seigniorye wholy abydeth to the lord as it was beefore. In the same maner it is, if a man have a rent charge out of certeine land, & he confirme the state ꝯ the tenant hath in the land, yet abideth to the cõfirmour the rent charge. In the same maner it is if a man have common of pasture in the land of any other, if he cõfirme the state of the tenãt of the land, nothinge shall depart from him of his common, but this notwithstanding the cõmon abydeth to him as it was beefore.

¶ But if there be lorde & tenant which holdeth of his lord by seruice of fealty & xx.s. of rent, if the lord by his deede confirme ꝯ estate of the tenant to hold by xñ.ð. t.ð. or by an ob. in this case the tenaunt is discharged of all other seruices, and shall yelde nothinge to the lorde but that ꝯ is comprised within the same confirmacion, yet if the lord will by the deede of confirmation, that the tenaunt in this case

ought to yelde to him an hawk or a rose yerely at such a feast &c. this reseruation is voide, for this that he reserueth to him a newe thinge þ neuer was parcel of the seruices before þ confirmatiõ, & so the lord may abridge the seruyces by such confirmation, but he may not reserue to him a new seruice &c.

¶ Also, if there be lord mesne & tenãt, & þ tenant is an abbot þ holdeth of þ mesne by certeine seruices yerely, the which hath no cause to haue actãce agaynst his mesne for to brig a writ of mesne &c. In this case if þ mesne cõfirme the state þ the abbot hath in the land to haue & to hold the land vnto him and his successors in frankalmoigñ or free almes &c. In this case this confirmation is good, & then the abbot holdeth of the mesne in frankalmoigñ, & þ cause is for this, þ no newe seruice is reserued, for al þ seruices specially specified, bee extinct & nothing is reserued to the mesne, but þ abbot shal hold þ lãd of him as it was before the confirmation, for he that holdeth in frankalmoigñ ought to do no bodely seruice so that by such cõfirmatiõ it appeareth that þ mesne shal not reserue vnto hi no newe seruice, but that þ lãds shalbe holden of hi as it was before, & in this case the abbot shall haue a writ of mesne if he be distrayned in hys default by force of the said confirmation where percase he might not haue such a writ before &c.

¶ Also, if I be seised of a villain, as of a villeine in grosse, & an other taketh hi out of my possessiõ claimig hi to be his villein, whereas hee

he hath no right to haue hi as his villein, & after I cõfirme ꝯ estate to him ꝯ he hath in my villein, this cõfirmation semeth void, for this ꝯ none may haue possessiõ of a mã as of a villein in grosse, but he which hath right to haue hi as his villein in grosse, & in so much ꝯ he to whõ ꝯ cõfirmac was made, was not seysed of him as of his villein at the time of the cõfirmatiõ, such confirmation is void, but in this case if such wordes were in the deede. Sciatis me dediſſe & confirmaſſe tali &c. talem villanũ meum, this is good, but this shall enure by force and way of graunt, & not by way of confirmation &c. Also, sometimes these verbes (dedi & conceſſi) enure by way of extinguishmẽt of ꝯ thing geuen or graũted. As a tenant holdeth of hys lord by certein rẽt, & ꝯ lord by his deede graũteth to the tenant & to his heires the rent &c. this shall enure to ꝯ tenũt by the way of extinguishmẽt, for by this graunt the rẽt is extinct. In the same manner it is where one hath a rẽt charge of certeine land, & he graũteth to ꝯ tenũt of the land the rent charge, & the cause is for this, ꝯ it appereth by the wordes of ꝯ grãt that the will of the donour is, that the tenaunt shal haue the rent &c. in so muche that he maye haue no rent out of his owne lande, for thys dede shalbe vnderstoode and taken for the moste aduauntage and auaile of the tenaunt that yt may be taken, and for that it is by way of extinguishment. Also, if I let land to a man for terme of yeres, & after I confirme hys estate without mo wordes put in the deede, he hath

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no greater estate but for terme of yeares as he had before, but if I release to him my right ꝑ I haue in the lande without mo wordes put in the dede, he hath estate of franketenement, & so maist thou my childe vnderstand great diuersities betwene releases and confirmatiõs. And if I be within age, & let land to one for terme of xx. yeres, & he graũteth the lande for terme of x. peres, so ꝑ he grãteth but parcel of the time. In this case whẽ I am of ful age yt I release vnto ꝑ graũtee of the leasee &c. this release is voide, for this, ꝑ there is no ꝑtuity betwene him & me. But if I cõfirme his estate, thẽ this cõfirmatiõ is good, but if my lessee graũt al his estate to another, then my release made to the graũtee is good & effectuall. Also if a mã graũt a rẽt charge out of his lãd to an other for terme of his life, & after I cõfirme his estate in the said rẽt, to haue and to hold to hĩ in fee taile or in fee simple, this cõfirmation is void, as to ꝑ enlarging of his estate for this, that he ꝑ cõfirmeth had no reuersion in the rent, but if a man seyled in fee of rent seruice or of rent charge, & hee graunteth the rent to another for terme of lyfe, and the tenant attorneth, and after hee confirmeth the estate of the grauntee in fee taile, or in fee simple, this cõfirmation is good as to enlarge his estate after ꝑ wordes of the deede of confirmation, for this, ꝑ hee that confirmed the estate at the time of the confirmation, hadde the reuersion of the rent &c. But in this case afore-

aforesaid, where a mā grauteth a rent charge to another for terme of lyfe, if he will that the graūtee shall haue estate in the taile or in fee, him behoueth that the dede of the grauntee of the rent charge for terme of life, be surrendred or cancelled, & then to make it a new deede of such a rent charge, to haue & to take to ẏ grā-tee in the taile or in fee. Ex paucis dictis intendere plurima possis.

¶ Attournement. Cap. x.

AAttournement is if there be lord & tenant & the lord will graūte by his dede the seruice of his tenant to another for terme of yeres, or for terme of life or in taile, or in fee, him behoueth ẏ the tenant attourne to the grauntee in the life of the graūtor by force and vertue of ẏ graūt, or otherwise the graunt is void: and atturnement is none other thinge in effect, but when the tenāt hath hard of the graunt made by his lord, that ẏ same tenant by word agree to the said graūt, as to say to the grauntee, I agree me to the graunte made to you, or I am wel content of the graūt made to you &c. but the more common atturnement is to saye, sir I attorne to you by force of the same graunt, or I become your tenāt &c. or to deliuer vnto the graūtee. i. d. ob. or farthing, by way of attournement &c.

¶ Also if a mā bee seised of a manour which manor is parcell in demesne, & parcel in seruice, if hee

if he will alie̅ such a maner to another, it behoueth that by force of the alienac̅ all the tenāts ꝑ holde of the alienor (as of this maner &c.) atturne to the alienee or otherwise ꝑ services abide continually in ꝑ alienor, except tenants at will, for it nedeth not that tenants at wyl atturne vpō such alienation &c. for this that ꝑ same lāds or tenem̄ts ꝑ they holde at will do passe to the alinee by force of suche alienation.

¶ Also, if there bee lorde and tenaunt, & the tenaūt letteth the tenem̄ts to a mā for terme of life, the remainder to another in fee. if ꝑ lord graūt the services to the tenaunt for terme of life in fee, in this case the tenāt for term of life hath fee in the services, but ꝑ services be put in suspēce during his life, but his heires shall haue the services after his death, & in that case it needeth not attournement, for by the acceptance of the deede of hym ꝑ ought to attorne, this is attornem̄t in him selfe &c. but where ꝑ tenant hath as great & high estate in the tenem̄ts as the lord hath in ꝑ seignior, in such case if the lord graunt the seruice vnto the tenāt in fee, this enureth by way of extinguishyng. Causa patet.

¶ Also, if there be lord & tenant, & the tenant maketh a lease to one for terme of life, sauyng ꝑ reuersiō vnto him, if the lord graūt the seigniory to ꝑ tenāt for terme of life in fee, in thys case it behoueth ꝑ he i̅ the reuersiō attorne to the ten̄t for term of lyfe by force of ꝑ graūt or otherwise the graūt is void, for this that he in the

the reuersion is tenant to the lord.

¶ Also of there be lord and tenaunt, and the tenaunt holdeth of the Lord by twenty manner of seruices, and the lord graunteth his seigniourie to another, if the tenaunt pay or doe anie of the seruices to the grauntee, this is a good attournement of and for the seruices, though that the tenauntes entent was to attorne but of the same parcell, for this that the seigniourie is an whole thing, though ỹ there be diuers manner of seruices that the tenaunt ought to do.

¶ Also if there be Lorde and tenaunt and the tenaunt holdeth of the Lorde, by many manner of seruices, and the lord graunteth the seruices to another by fine, if the grauntee sue a Scire facias out of the same fine, for any parcell of the seruices & hath iudgement to recouer, this iudgement is a good attournemtnt in the law for al the seruices.

¶ Also if the Lord of the rent, graunteth the seruices vnto another, and the tenaunt attourneth by a peny, and after the grauntee distraineth for rent behinde, and the tenaunt to hym make the rescous. In this case the grauntee shall haue no assise of the rent but hee shall haue a writ of Rescous for that the gift of the peny was but by way of attornement. But if the tenaunt had geeuen vnto the grauntee the said peny as parcel of the rent or an halfe peny, or a farthinge by way of seisin of the rent, then this is a good attournement, and also ỹ

is a good seisin to the grauntee of the rent, and then vpon such rescous the grauntee shal haue an assise &c.

¶ Also if a man let tenemẽts for terme of yeres by force of which the lessee is seised, & after the lord graunteth by his dede the reuersion to another for terme of life, or in taile, or in fee, it behoueth him in this case ỹ the tenãt for terme of yeres attorne, or otherwise nothing palleth to such grauntee by such dede, & if in this case the tenant for terme of yeres attorne to ỹ grauntee, then by ẽ by palleth the franketenement to ỹ grauntee by such attornement without any iuery of seisin &c. for this if any iuery shall bee made or nedeth to be made in such case, then ỹ tenant for terme of yeres shalbe at time of ỹ iuery of seisin out of his possessiõ, which should be against reason.

¶ Also if lande be let to a man for terme of yeares, the remainder to another for terme of lyfe reseruing to the lessour a certayne rent by yeare, and iuery of seysin is made vppon this to the tenaunt for terme of yeares, if he in the reuersion in such case graunt his reuersion to another &c. and the tenant that is in the remainder after the terme of yeares attourneth, this is a good attournement, and he to whom the reuersion is graunted, by force of such attournement shal distraine the tenant for terme of yeares for the rent due after such attournement, though the tenant for terme of yeres neuer attourned vnto him, and the cause is for

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that where the reuersion is dependant vppon the state of franketenement, it suffyseth that the tenant of the franktenement attorne vpon such graūd of reuersion &c. & it is to wit that where a lease for terme of yeres or for terme of life, or a gift in the taile is made to any mā, reseruing to such a lessor or donor certein rent, if such a lessour or donour graūt his reuersiō to another, & the tenant of the lande attorne, the rent passeth to the graūtee, though in the dede of the graūt of reuersiō, no mencion is made of the rent, for this, ꝑ the rent is incident to the reuersion in such case, & not econuerso. For if a mā will graūt ꝑ rēt in such case vnto another reseruing to him ꝑ reuersiō of the lād, though the tenant attorne to the graūtee, this shalbe but a rent secke &c.

¶ Also, if a man let land vnto another for terme of lyfe, and after such lease hee confirmeth by a deede the estate of the tenaunt for terme of life, the remainder to another in fee, and the tenaunt for terme of lyfe accepteth the dede, then is the remainder in deede to him to whō the remainder was geuen or ymitted in the same deede, for by the acceptaunce of the tenant for terme of life of the same deede, thys is a graunt of him and so an attournement in lawe, but yet hee in the remainder shall haue none action of waste nor other benefite by such remainder, but if that he haue the same dede in his hand, by which the remainder was graūted vnto him, and for this that in such case

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the tenant for terme of lyfe will retaine to him the deede, to the entent that he in ỹ remainder shal not haue an action of waſt againſt him, for this that he may not come to haue the poſ-ſeſſion of the deede &c. It shal bee good in ſuch caſe for him in the remainder, that a deede in-dented be made by him that will make the cō-firmation, and the remainder ouer &c. And hee that maketh ſuch confirmation deliuer a part of the Indenture to the tenāt for terme of life, & the other part to him that hath the remain-der, and then he by the winge of the part of the indenture may haue an action of waſt againſt the tenant for terme of life, and alſo other ad-uauntage that he in the remaynder may haue in ſuch caſe.

¶ Alſo if two iointenauntes bee, whych lette lande to another for terme of life, yel-dinge to them and their heires a certayne rent by yeare. In this caſe if one of the two ioynt-enauntes in the reuerſion releaſe to the other ioyntenantes in the ſame reuerſion, thys releaſe is good, and he to whom the releaſe is made, ſhall haue onely the rent of the tenaunt for terme of lyfe, and ſhall haue a writt of waſt againſt them though he neuer attour-ned by force of ſuch releaſe, & the cauſe is for the priuitie that once was betweene the te-naunt for terme of lyfe and them in the reuer-ſiō. In the ſame maner, and for the ſame cauſe it is, where a man letteth lande to another for terme of his life, the remaynder to another

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for terme of his life, reseruing the reuersion to the lessour, in this case if he in the reuersion release to him in the remainder &c. & to his heirs all his right &c. then he in the remainder hath a fee &c. and shall haue a writ of waste against the tenant for terme of life without any attornement of him &c.

¶ Also if a lease be made for terme of lyfe the remainder vnto another in the taile, ỹ remainder ouer to the right heires of the tenaunt for terme of life, in this case if the tenant for terme of life graūt his remainder in fee to another by his deede, the remainder by ỹ by passeth by his dede without any other attornement. For if any ought to attorne in this case, it should be the tenāt for terme of life. And it were in vaine that he attorne vpon his owne grant &c.

¶ Also, if there be Lord and tenant, & the tenaunt holdeth of the Lord by certein rent and knightes seruices, if the Lord graunt the seruices of the tenaunt by fine, the seruices bee by and by in the graūtee by force of the fine, but yet the Lord may not distraine for any parcel of his seruices without attornement. But if the tenaunt dye his heire being within age, the lord shal haue the ward of the body of the heire and of the lande &c. howbeit that he neuer attourned. For this that ỹ seigniory was in the graunte maintenant by force of the fine. And also in some case if the tenant dye without heire, the lord shall haue the tenaūcy by way of Eschete. In the same maner it is if a

man graunt ỹ reuerſiō to his tenant for terme of life to another by fine, the reuerſion palleth preſently to the grantee by force of the fine, but the graūtee ſhall neuer haue action of waſt without attournment &c. But yet if the tenāt for terme of life aliene in fee, the grauntee may enter &c. for this that the reuerſiō was in him by force of the fine, & ſuch alienatiō was to his diſenheritance. But in this caſe where ỹ lorde graunteth the ſeruices of his tenant by fine, if the tenaunt dye, his heires being of full age, ỹ grauntee by the fine ſhal not haue the reliefe, nor neuer ſhall diſtraine for the relefe, except there had ben ſome attornement of the tenant that dyed &c. for of ſuch thynges that lye in diſtreſſe, vppon the which a writ of Replegyare is ſued &c. a man ought to auow ỹ taking, good & righteous &c. there ought to be attornement of the tenant, & howbeit that the grant of ſuch ſeruices be by fine. But to haue ward of landes and tenementes ſo holden durynge the nonage of the heire, or them to haue by ways of eſcheate, there needeth not any diſtreſſe &c. but an entre in the lande by force of the ryghte of the ſeignioury that the grantee hath by force of the fine.

¶ Alſo in auncient Boroughes or Cities where tenements within the ſame boroughes or Cities beene deuyſable by teſtament by the cuſtome and the vſe &c. if in ſuch borough or citie a man bee ſeiſed of ren: ſeruice or of rent charge, and he deuyſeth ſuch rent or ſeruice to ano-

another by his testament & dyeth &c. In this case he to whō the deuise is made may distrain for the rent or the seruyces behind, howbeit ꝑ the tenant neuer attourned. In the same maner it is where a man letteth such tenementes deuisable to another for terme of life, or for terme of yeres, & deuised the reuersion by his testament to another in fee or in fee taile, and dieth, & anone after ꝑ the tenant maketh wast, he to whom the deuise was made shal haue a writ of wast, howbeit that the tenāt neuer attourned, & the cause is for this that the wil of the deuysor made by the testament, shal be performed after the intent of the deuisour, & if the effect of this should lie vpon the attourning of the tenant &c. Then percase the tenant would neuer attourne, & then the wil of the deuisour should neuer be performed, & therfore the deuisee shall distraine or haue an action of wast without attornement. For if a mā deuise such tenementes to another by his testament (habend' ſibi imperpetuum) and dyeth, and the deuisee entreth, hee hath a fee simple, Cauſa qua ſupra, & yet if a deede of feoffement were made to him by the deuisour of the same tenements (habendum & tenendum ſibi imperpetuum) yf lyuery and seisin were neuer thereupon made, hee shall haue none estate but for terme of lyfe &c.

¶ Also if a man seised of a Manour whych is parcell in demeane and parcell in seruyces and thereof bee disseysed, but the tenaunt

which holdeth of the manour, neuer attorneth to the disseisour, in this case, howbeit ỳ the disseisor dye &c. & his heire is in by discēt. yet may the disseisy distrain for the rent being behinde & haue the seruice: but if the tenants come to ỳ disseisour & say we become your tenaunts &c. or otherwise make attournement to him &c. & after the disseisor dyeth seised &c. then ỳ disseisy may not distrain for the rent, for this that al the manor discendeth to the heire of the disseisour. But if one holde of mee by rent seruice which is a seruice in grosse, & another that no right hath, claimeth the rent & receiueth & taketh the same rent of my tenant by coherciō of distresse, or by other fourme & so disseiseth mee by taking such rent. howbeit ỳ such a disseisor dye seised by such takinge of the rent, yet after his death I may wel distraine for the same rēt being behinde before the death of the disseisor & after his death, & the cause is this, ỳ such is not my disseisour but by election at my will, for howbeit that he toke the rent of the tenant I may at all time distraine my tenant for ỳ rent behynd &c. so it is to me but as if I will suffer the tenaunt to bee by so much tyme behynde of payement to mee of the same rent, for the payement of my tenaunt to another to whom he ought not to pay, is no disseisin to mee, nor shall not put mee out of my rente wythout my will and electyon, for howebeit that I may haue assise against such a taker &c. yet this is at my election if I will take hym as

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my disseisour or not, so ꝑ such discents of rēts in grosse ne putteth not out the lords fro their distresse, but ꝑ at eche time they may well distraine for the rent behind, & in this case if after the decease of him ꝑ so wrōgfully tooke ꝑ rēt, I graunt by my dede the seruices to another, & the tenant attorneth: this is good ynough. & the seruices by suche grauñt & attornement, incontinent be in the grauntee &c. But otherwise it is where the rent is parcel of the manour, & the disseisour dieth seised of the whole manour, as in the case beforesaid.

¶ Discontinuance. Cap. xi.

DIscontinuaunce is an auncyent worde in the law, and hath diuers significations &c. but as to one entēt it hath such a significatiō, that is to say, where a man hath alieued to another certayne landes or tenementes, & dyeth, and another hath ryght to haue the same landes or tenementes, but hee ne maye enter in them, because of suche alienation &c. As yf an Abbot seised of certeine lands and tenements in fee, and hee alieneth the same lands and tenemts to another in fee or in tayle, or for terṁ of life, and the abbot dieth, his successour maye not enter in the same landes and tenementes, howebeeit that hee haue ryght to haue them as in the right of the house, but hee is put to his action to recouer the same landes or tenementes which is called a writ de ingressu sine

aſſenſu capitali.

¶ And if a man ſeiſed of land as in the right of hys wyfe &c. and therof enfeoffeth an other &c. and dyeth, the wife may not enter, but ſhee is put vnto her action the which is called Cui in vita.

¶ Alſo, if tenant in the taile of certeyne land thereof enfeoffe another &c. and hath iſſue and dyeth &c. his iſſue may not enter in the lande, howbeit that hee hath right and title to that, but that he is put to his action, that is called a Formedon in the diſcender.

¶ Alſo, if there be tenāt in the taile, & the reuerſion is to the donour & to his heires, if the tenāt make a feoffemēt &c. and dieth without iſſue, he in the reuerſion may not enter, but is put to his action of Formedon in ỹ reuerter, & in the ſame maner it is where the tenaunt in the taile of certein land where the remaynder is to another in the taile, or to another in fee, if the tenant in the taile alieneth in fee, or in fee taile &c. & after dieth without iſſue, they in the remaynder may not enter, but bee put to their writ of Formedon in the remainder &c. and for this that by force of ſuch feoffemēt & ſuch alienations in the caſes aforeſayd, & in like caſes they which haue title & right after ỹ death of ſuch a feoffor or alienor may not enter, but bee put to their actiōs vt ſupra. ¶ Therfore ſuch feoffemēts & alienatiōs be called diſcontinuāces.

¶ Alſo, if a tenāt in the taile be diſſeiſed, & he releaſeth by his deede to the diſſeiſour & to his heires

heires al the right ꝑ he hath in ꝑ same lande, this is no discontinuance, for this ꝑ nothig of right passeth to the disseisour but for terme of life of ꝑ tenaunt in the taile ꝑ made the release &c. But by the feoffement of tenant in ꝑ tayle a fee simple passeth by the same feoffement by force of iuery of seisin &c. but by force of a release, nothing passeth but the right ꝑ hee may lawfully & rightfully release without hurt or dāmage to other persons which thereto haue right after his decease &c. & so it is a great diuersitie betwene a feoffement of the tenant in the taile, & a release of the tenant in the taile. But it is said, ꝑ if tenaunt in the tayle in this case release to the disseisour & bindeth hym & his heires to warrantise &c. and dyeth, & this warranty discendeth to his issue. then ꝑ is a discontinuāce because of warrantise &c. But if a mā haue issue a sōne by one wife which dieth, & after he taketh another wife, & ꝑ tenemēts be geuen to him & his second wife, & to ꝑ heires of their two bodies engendred, & they haue issue another sōne, then ꝑ second wife dieth, & after ꝑ tenant in the taile is disseised, & he releaseth to his disseisor all his right &c. & bindeth him & his heires vnto warrātise, and dieth, this is no discontinuāce to the issue in ꝑ taile by the second wife, but he may wel enter &c. for this that the warraūtise discended to his elder brother, that hys father had by hys first wife.

In the same maner where tenemēts be descen-

dable to the yonger sonne after the custome of borough English, be entailed &c. & the tenant in the taile hath issue two sones & is disseised, & he releaseth to his disseisor all hys right & warrantise & dieth, ꝑ yonger sonne may enter upon the disseisor notwithstanding the warrantise. for this ꝑ the warrãtie descendeth to the elder sonne, for alway the warrantise descendeth &c. to him that is here by the cõmõ law.

¶ Also, if an Abbot be disseised, and he releaseth to the disseisour with warrantise, this is no discontinuance to his successour, for this ꝑ nothing passeth by this release but the ryghte that he hath during ꝑ time that he is Abbot and this warrãtie is expired by his priuatiõ or by his death.

¶ Also, if tenaunt in the taile be seised of certeyne lande, and hee letteth the same land for terme of yeres, by force of which lease the lessee is in possession, to which possession the tenaunt in the taile by his dede releaseth al his right that he hath in the same lande to the lessee and to his heires for euer, this is no discõtinuaunce, but after the decease of the tenaunt in the taile, his issue may well enter, for thys that by suche release nothinge passeth but for terme of life of the tenaunt in the taile. In the same maner if the tenant in the taile confirme ꝑ estate of the lessee for terme of certeine yeres to haue and to holde to him and to his heires, this is no discontinuaunce, for this that nothynge passeth by suche confirmation, but the

estate

estate ꝑ the tenaunt in the taile had for terme of his life.

¶ Also, if a tenaunt in ꝑ taile by his dede grāt to another al his estate ꝑ he hath in the tenements entailed to him, to haue & to hold al his estate to the other & to his heirs for euer, & deliuereth seisin accordinge. In this case the tenant to whom the alienation was made, hath none other estate but for term̄ of life, of ꝑ tenāt in taile, & so it may wel be proued ꝑ the tenāt in ꝑ taile may not graūt ne alien ne make any rightful estate of ꝑ frāktenemēt to another ylō but for term̄ of his owen life &c. For if I geue certain land in the taile to a man, sauing ꝑ reuersion to me, & after the tenāt in the taile enfeoffeth another in fee, the feoffe hath no right estate in the tenemēts, for two causes. One is for that ꝑ by such feoffemēt my reuersiō is discontinued which is a wrong act & not a rightful act. Another cause is, if the tenant die, and his issu sueth a writ of Formedon against the feoffee, the writ shal say & also the declaratiō, ꝑ the feoffe wrōgfully him deforced, therfore if wrōgfuly he hī deforced, he had no right estate

¶ Also, if land bee let to a man for terme of his life, the remainder to another in the taile if he in ꝑ remainder wil graūt his remainder to another in fee by his dede, & ꝑ tenāt for terme of life attourneth, this is no discontinuance of the remainder.

¶ Also, if a man bee tenaunt in the tayle of aduowson in grosse or of cōmon in grosse, if he

by his

by his deede will graunt the aduowson or ꝑ common to another in fee, this is not discontinuance, for in such case the grauntee hath no estate but for terme of lyfe of the tenant in the taile ꝑ made this graunt &c. Note wel ꝑ such things as passe by way of grāt made by dede, made in the countrey &c. such graunt maketh no discontinuance as in the case aforesaid, & other like cases &c. And howbeit ꝑ such thigs be graunted in fee, by fine leuied in the kinges court &c. yet they make no discōtinuāce &c.

¶ Also, if a man bee seysed in tayle of landes deuisable by testament &c. & hee deuiseth it to an other in fee, and dyeth, & the other entreth, this is no discontinuance, for this that no discontinuance was made in the life of ꝑ tenaunt in the taile &c.

¶ Also, if an abbot haue a reuersion or a rent seruice, or a rent charge, and will graunt that reuersion, rent seruice, or rent charge to another in fee, & the tenāt attorneth &c. this is no discontinuāce. In ꝑ same manner it is where an Abbot is seised of aduowson or of suche things ꝑ passe by way of grāt without ly-nery of seisin &c.

¶ Also, if there bee graundfather, tenaunt in the tayle, father and sonne, and the graundfather is disseised by the father, and the father maketh a feoffement in fee without warrantise and dieth, and after the graundfather dyeth, the sonne may well enter vpon the feoffee for

for this that this was no discontinuãce, in so much ỹ the father was not seised by force of ỹ taile at the time of the feoffement &c. but was seised in fee by disseisin made to ỹ grãdfather.

¶ Also, if a woman inheritrix haue an husbãd within age, which maketh a feoffemẽt of the tenements of the wife and dyeth, it hath bene questioned if the wife may ẽter or not. And it seemeth to some mẽ that the entre of ỹ wyfe after the death of her husband shalbee lawfull in this case, for when her husband made suche a feoffement &c. he might well enter notwithstanding such feoffemẽt during the couerture, and hee myght not enter in his owne righte, but in the right of his wife &c. Ergo such right that hee had to enter in the right of his wife &c. that right of entre abydeth to the wife &c. after his decease, and it hath bene saide, that if two ioyntenantes beinge within age, made a feoffement in fee, & one of the children dieth, & the other suruiueth, in so much that both children might ẽnter ioyntly in their liues, thys right of entre groweth al to him that suruyueth, and so may enter into the whole &c.

¶ Also the heire of the husbãd that made the feoffemẽt within age may not enter, for this ỹ no right descendeth to such an heire in the case aforesayd, for this that the husband had neuer any thing but in ỹ right of his wife. And also when a childe maketh a feoffement beynge within age, this shall neuer grieue nor hurt him but ỹ he may well enter &c. And this shoulde

bee

be against reason that such a feoffement made by him ꝑ was not able to make such a feoffement shal grieue or hurt other, to toll other of their entryes &c. And for these causes, it seemeth to some ꝑ after the death of such an husbād so being within age at the time of the feoffement &c. that his wife may wel enter &c.

¶ Also, if a womā inheritrice taketh an husband and hath issue a sōne & the husbād dieth, & she taketh another husband, and the second husband letteth ꝑ land that he hath in ꝑ right of his wife to another for terme of his lyfe, & after the wife dieth, & after the tenāt for terme of life surrendreth his estate to the secōd husband &c. Enquire if the sonne of the wife may enter or not, in this case vpō ꝑ second husbād during the life of the tenant for terme of lyfe. But it is clere lawe in thys case ꝑ after the death of the tenaunt for terme of life, the sōne of the wife may well enter, for this ꝑ the discontinuance ꝑ was made alonely for terme of life is determined &c. by the death of the same tenant for terme of life &c.

¶ Also, if ꝑ parson or vicar of a church aliene certeine landes or tenementes parcell of hys glebe &c. to another in fee & dieth, or resigneth &c. his successour may wel enter, notwithstāding such alienation as it is sayde in a Note, Anno 2. Henric. 4. Termino Mich. quæ sic incipit. Nota quod dictū fuit pro lege. In a writ of Accompt brought by the master of a Colledge, that if a parson or a vicar graūt certein lands

that

that is of the right of his church to another & dieth or chaūgeth: that his successor may enter. And I trow ỹ cause is for this ỹ the parsō or vycar ỹ is seised &c. in right of the church hath no right of ỹ fee simple in the tenemēts but the right of the fee simple thereof abydeth in an other person. And for this cause his successour may well enter notwithstanding such alienation &c. for a Bishop may haue a writ of right of tenemēts of right of his Bishoprich, for this that the right of fee simple abideth in him & in his chapiter: and a Deane may haue a writ of right &c. for this that the right abideth in him and in his chapiter, and an Abbot may haue a writ of right, for this ỹ ỹ right abideth in him & in his couent, & sic de alijs casibus consimilibus &c. but a person or vicar may not haue a writ of right &c. but ỹ highest writ that they may haue, is a writ de Iuris vtrū, ỹ which is a great proofe that the right of fee simple is in abeiance, that is to say alonely in the remembrance, entendement & consideration of the law, for me seemeth that such a thinge in such a right that is said in diuers bookes to be in abeyance, is as much to say in latin *S.* talis res vel tale rectum que vel quod non est in homine adtunc superstite, sed tantummodo est & consistit in consideratione & intelligentia legis &c. et quidā alii dixerūt talē rem aut tale rectū fore in nubib⁹ &c. But I suppose ỹ they vnderstand these wordes in nubibus &c. as I haue said before.

Also if a person of a Church dye, now the frank-

frankstenement of the glebe of the personage is in no man, during the time that the parsonage is void, but is in abeiance, that is to say, in cō-sideration & intelligence of the law, til another be made parson of ỹ same church, & immediatly when another is person, the frankstenement in deede is to him as successour.

¶ Also some men peraduenture will argue & say, ỹ in so much that the person with thassent of the patron & Ordinary, may graunt a rent charge out of the glebe of his personage in fee, & so charge the glebe of his personage perpetually, Ergo they haue fee simple, or two or one of thē hath fee simple at the least &c. So this it may be aunswered, ỹ it is a principal in lawe, that of euery land there is a fee simple in some mā or els the fee simple is in abeyance &c. And another principal is, ỹ euery land of fee simple may be charged with a rent charge in fee, by one way or by another &c. and when such rēt is graunted by the deede of the person, the patrone and the Ordinarye in fee, none shall haue no preiudyce nor lolle by force of such graunt. But the grauntours in their liues, & the heire of the patrone, and successour of the Ordinary after their deceases, and after such charge & the person dye, hys successour may not come to the said Church to be parson of the same church by the lawe. But by presentment of the patron and admission and institution of the Ordinary &c. And for this cause it behoueth that the successour hold him content

and

and agreed, with that which his patron & Ordinary lawfully haue don before. But ỹ cause that such rent charge is gone, is for this, that they which hath entries in the said church, that is to say, the patron after the law temporal, & the Ordinarye after ỹ law spiritual, were assented as parties vnto such a charge &c. & this seemeth the very cause that such glebe may bee charged in perpetuitie &c.

¶ Also if a Bishop alien landes which bene parcel of his bishoprick, & dieth, this is a discontinuance to his successor, for this, that hee may not enter, but is put to his writ De ingressu sine assensu Capituli &c.

¶ Also, if a Deane alien lande parcel of hys Deanry, & dyeth, his successour may not enter, but he may haue a writ De ingressu sine assensu Capituli &c.

But if the Deane & the Chapiter haue lād to thē & to their successors in common &c. Howbeit ỹ the Deane alien such lands his successours may wel enter, for this that the frankte nement at the time of the alienation, was as wel in ỹ Chapiter as in ỹ Dean. But where the Deane is sole seyed as in ryght of hys Deanry, then such alienation is discōtinuance to his successour, as it is aforesayd. Also some men will argue and say, that if an Abbot & hys conent bee seised in their demeane as of fee, of certaine land to them and to their successours &c. and the Abbot without assent of hys conent alyeneth the same lande vnto another,

and

& byeth, this is a discontinuance to his succes-
sours &c. & by the same they will say, ꝑ where a
Deane & a Chapiter be seised of certein lād to
thē & to their successors, if the Deane alie the
same lāds &c. this shalbe a discontinuance to
his successors. So ꝑ his successor ne may not
enter &c. To this may be answered, that there
is a great diuersity betwene the said two cases
for whē an Abbot & the conuent be seised &c. yet
if they be disseised, the Abbot shall haue assise
in his owen name without the naming of his co-
uent &c. And if a man may or will sue a Præ-
cipe quod reddat of the same landes when they
be in the handes of the Abbot and his conuent,
it behoueth that such an action be sued against
the Abbot onely without naming of ꝑ conuent
&c. for this, that al they be dead persons in the
law, saue only the Abbot ꝑ is soueraigne &c.
& this is cause of the soueraintie &c. for els he
should be as one of ꝑ other monks of the Co-
uent &c. But the Deane & the Chapiter be no
dead persons in the lawe &c. ꝑ or eche of them
may haue an action by him self in diuers cases
and of such landes or tenementes whych the
Deane and Chapiter haue in common &c. yf
they be disseised, that the Deane & the Chapi-
ter shal haue assise, & not the Deane alone, &
if another will haue an action real of such lāds
or tenemēas against the Deane &c. it behoueth
him to sue against the Deane and Chapiter,
& not against the Deane alone &c. & so appea-
reth great diuersitie betwene these two cases.

¶ Also

¶ Also if the master of an hospital discontynue certein land of his hospital, his successour may not enter, but he is put vnto his writ De ingressu sine assensu confratrũ & sororũ suarũ, & all such writs do plainly appere in ỹ Register &c.

¶ Remitter.

REmitter is an auncient tearme in the law, and it is where a man hath two tytles to landes or tenementes, that is to say, of an elder title, and another of the latter tytle, and hee commeth to the land by the latter title, yet the lawe adiudgeth him to bee in by force of the elder tytle, for this, that the elder tytle ys the more sure title, and the more worthy title, and then whē a man is iudged in by force of the more elder title, this is vnto him saide a Remitter, for this ỹ the law shal admit him to bee in the lande by the elder title: as yf the tenaunt in the taile discontinue the tayle, and after he dieseiseth his discontinue, and so dyeth seised, whereby the tenementes discend to his issue, as to his cosin inheritable by force of the taile, in this case this is to him whom the tenementes discende which hath ryght by force of the tayle, a Remitter in the tayle taken, for that, that the lawe shall put and adiudge him to be in by force of the tayle, which is his elder title, for if hee shall bee in by force of dyscent, then the discontynue may haue a writ of Entre vppon the disseysin in the Per against him, and recouer the tenementes, and

his dāmages, but in ſomuch that he is in by force of the taile, ꝯ title & the intereſt of ꝯ diſcontinuc, is al vtterly adnulled & defeated &c.

¶ Alſo if tenant in the taile infeoffe in fee his ſonne or his couſin inheritable by force of the taile, the which ſonne or couſin at the tyme of ꝯ feoffemēt is within age and after the tenant in the tayle dyeth, and hæ to whom the feoffement was made is his heire by force of the title in the taile, this is a Remitter to the heire in the taile, to whom the feoffement is made. For howbeit that during the life of the tenāt in the taile that made the feoffemēt, ſuch heire ſhalbe adiudged in by force of the feoffemēt, yet after the death of the tenaunt in the taile, the heire ſhalbe adiudged in by force of the tayle &c. & not by force of the feoffement, and though that ſuch an heire was of full age at the tyme of the death of the tenaunt in the tayle that made the feoffement, this maketh no matter if the heire were within age at the tyme of the feoffement made to him, and if ſuch an heire being within age at the tyme of the feoffement commeth to full age ſyuinge the tenaunt that made the feoffement, and ſo being of full age, hee chargeth by his deede the ſame lande with a common of paſture, or with a rent charge, and after the tenaunt in the tayle dyeth: howe it ſeemeth that the lande is diſcharged of ꝯ cōmon, & of the rent, becauſe the heire is in by an other eſtate in ꝯ land, then he was at the tyme of the charge made, in ſo much

much ỹ he is in his remitter by force of ỹ taile & so the estate that hee had at the time of the charge is vtterly defeated &c.

¶ Also a principall cause why such an heire in the cases aforesaid, and other cases semblable shalbe said in his remitter, is for this, that there is no person against whom that he may sue his writte of Formedon, for against hym selfe he may not sue, & he may not sue against none other, for none other is tenāt in ỹ franktenement, & for that cause the lawe adiudgeth him in his remitter, ỹ is to say, in such plight as he had lawfully recouered the same land against another.

¶ Also if lande be tayled to a man and hys wife, and to the heires of their two bodies engendred, the which haue issue a daughter, and the wyfe dyeth, and the husband taketh an other, and hath issue an other daughter, & dyscontinueth the taile, and after he disseiseth the discontinuee, and so dyeth seysed, now the land discendeth to the two daughters, in this case as to the elder daughter that is inheritable, this is a Remitter but of the halfe, and as to the other halfe, she is put to her actiō of Formedon against her sister, for in this case two sisters bee not tenauntes in parcenary, but bee tenaunts in common, for this ỹ they bee in by dyuers titles, for the one sister is in her remitter by force of the tayle, as to that ỹ vnto her belongeth. And the other sister is in as to that, that belongeth to her in fee simple by the

diſcent of her father. In the ſame maner it is if the tenaunt in the tayle enfeoffe his heire apparaunt in the tayle being the heire within age, and an other iointenaunt in fee, & the tenaunt in the taile dieth. Now the heire in the taile is in his remitter as to ỹ halfe, & as to ỹ other halfe he is put to his writ of formedõ &c.

¶ Alſo if tenant in the taile enfeoffe his heire apparant, ỹ heire being of ful age at time of ỹ feoffemẽt & after the tenãt in taile dieth, this is no remitter to ỹ heire, for this that it was his owne folly, that hee being of full age woulde take ſuch feoffemẽt &c. But ſuch folly may not be adiudged in the heire beinge within age at the time of the feoffement &c.

¶ Alſo if tenaunt in the tayle enfeoffe a woman in fee, and dyeth, and his iſſue within age taketh the woman to wife, this is a remitter to the child, & the wife then hath nothing, for this that the huſband & the wife bene but one perſon in the law. And in that caſe the huſbãd may not ſue a writ of Formedon, vnles he will ſue againſt him ſelfe, the which ſhalbe inconuenient, & for that the law iudgeth the heire, in his remitter, for this that no folly may be arected to him being within age at the time of the ſpouſayles &c. And if the heire be in his remitter by force of the taile, it followeth by reaſon that the wife hath nothing &c. for in ſo much that the huſband & the wife be but one perſon, the lande may not be ſeuered by halues, & for ſuch cauſe the huſbande is in his remitter of

the

the whole. But otherwise it is, if such an heir bee of full age at the time of the spoulales, then the heire hath nothinge but in ꝯ right of his wife.

¶ Also, if a woman seised of certein lande in fee, taketh an husband, the which alieneth the same lande to another in fee, and the alyene letteth the same lande to the husband and the wife for terme of their two lives, saving the reuersion to the lessour, & to the heire, in this case the wife is in her remytter, and shee is seysed in deede in her demeane as in fee, as shee was before, for this, that the takynge of estate shalbee adiudged in the law the deede of the husbande, and not the deede of the wife, so that no folly may be iudged in the wyfe that is couert in such case. And ī this case the lessour hath nothing in the reuersiō, for this that the wife is seised in fee. But in this case if the lessour will sue an accion of waste against the husbande and his wife, for this, that the husband hath made wast, the husbande may not barre the lessour for to shew this that the taking of estate made vnto him and to his wyfe made a remitter to his wife, for this that the husbād is stopped to say this against his feoffement and owne reprise of estate for terme of lyfe to him and hys wife, and yet the lessour hath no reuersion, for this ꝯ the fee simple is in ꝯ wife. So a man may see a matter in this case that a man shalbee estopped by a matter in deede, though no writinge by deede indented

ted or otherwise be therof made. But if in an action of waste the husbande make default at the grounde distresse, and the wife prayeth to bee receyued, and is receiued, shee shall well shewe al the matter, and howe she is in her remitter, and shall barre the lessour of hys action. For in euery case that the wyfe is receyued for default of her husband, she shal pleade and haue the same aduantage in pleading as she were a womā sole. And howbeit that the alienee made no lease to the husbande and hys wife by deede endented, yet this is a remitter to the wife, and though the alienee yelded the same lande to the husbande and his wyfe by fyne for terme of their liues, yet this is a remitter to the wife, for this that the wyfe couert ꝑ taketh estate by fyne shall not bee examined by the Iustices. And here note well ꝑ when any thing shal passe from the wife ꝑ is couert of husbād by force of a fine, as the husbād & wife make conusāce of right to an other &c. or make a graunt to yeld to another, or release by a fine to another. Et sic de similibus where the right of the wife passeth from the wife by force of the same: the wife in all suche cases shalbe examined before ꝑ the fine be accepted. And suche fines conclude suche wiues couert for euer. But where nothing is moued in the fine, but al only that the husbād and the wife take estate by force of the same fine, this shal not cōclude the wife, for this that in such case she shal neuer be examined.

¶ Also

¶ Also, if tenant in the taile discontinue the taile, & hath a daughter & dieth, & the daughter being of ful age taketh an husbande, & the discontinue maketh a lease of this to the husband & his wife for terme of their liues, thys is a remitter in deede of the wife, & the wyfe is in by force of the tayle, Causa qua supra.

¶ Also, if lād be geuen to the husband & his wife, to haue and to holde to them, and to the heires of their two bodies begotten, and after the husband alieneth the land in fee, & taketh againe an estate to him & to his wife for term of their two liues, In this case this is a Remitter in deede to the husbande and the wyfe mauger ȳ husbād, for it may not be a remitter to ȳ wife, except it be a remitter to ȳ husband for this that the husband and his wife be but one person in the law, though ȳ the husbande is stopped to claime this to be a Remitter in him against his alienatiō & his owne repplyel as it is aforesaide.

¶ Also, if land bee geuen to a woman in the tayle, the remainder to an other in the tayle, the remaynder to the thirde in the tayle, the remaynder to the fowerth in fee, and the wife taketh an husbande and the husband discontinueth the land of the wyfe, by this discontynuaunce all the remaynders bee discontinued, for yf the wyfe dye without issue, they in the remaynder shall haue no remedye, but to sue their writtes of Formedon in the Remaynder when they come to their tyme &c. But yf after such discontinuaunce, estate bee made to

the husbande and his wyfe for terme of theie two lyues, or for terme of an others life, or an other estate &c. for this, that this is a Remitter to the wife, this a Remytter to all those in the remaynder &c. For after this that the wyfe that is in her remytter, dyeth without issue, they in the remaynder may enter &c. Without any action or suit &c. In the same manner it is of them which haue ỹ reuersiõ after such taile &c.

¶ Also, if a man let a house to a woman for terme of her life, sauinge the reuersion to the lessour, and after one sueth a faynt and false action against the woman, and recouereth the house against her by default, so that the woman maye haue agaynst hym a writ Quod ei deforciat, after the statute of Westm̃ the second Capit 4. nowe is the reuersion of the lessour discontinued, so that hee maye haue no accion of waste. But in this case if the woman take an husband, and hee that recouereth letteth the house to the husband and his wyfe for terme of their two liues, the wife is in her remitter by force of the first lease. And yf the husbande and the wyfe make waste, the first lessour shal haue against him a writ of waste for this, that in so much that the wife is in her remitter, hee is remitted to his reuersion. But it seemeth in this case if he that here cõmeth by the false action, will bringe an other writ of waste against the husbande and hys wyfe, the husbande hath no remedye against hym, but to make default at the great distresse

&c.

&c. And to cause the wife to bee receyued and to plede ỹ matter against the second iessour, & to shewe that the action by which he recouered was faise & fained in the law, & so ỹ wife may barre &c.

¶ Also, if the husbande discontinue the lande of hys wyfe, & after taketh estate to him & to his wife, & to the third man for terme of their liues, or in fee, this is a remitter to the wom̃ but as to the moity. And as for the other moitie it behoueth her after the death of her husband to sue a Cui in vita.

¶ Also, if the husband discõtinue the land of his wife, and go ouer the sea, and the discontinue let the same land to ỹ woman for terme of lyfe, and deliuer to her seysin, and after the husbande commeth and agreeth to that liuerie of seisin, thys is a Remytter to the woman, & yet if the woman had bene sole at that time of her lease made to her, this should be to her a remitter, but in so much as she was couert baron at ỹ time of the lease, and the liuery of seisin made to her, though that shee onely take the liuery of seisin, this was a Remitter to her, because a woman couert shalbee adiudged as an infaunt within age in suche case &c. Enquire in this case, if the husbande when hee commeth agayne will disagree to ỹ lease and liuery of seysin made to his wyfe in his absence, if this shall put the woman from her remitter.

¶ Also, if the husband discontinue the tenementes of his wife, and the dyscontinuee is dis-

disseised, & after the disseisor letteth the said tenements to ꝯ husband & his wife for term of life, this is a remitter to the wyfe, but if the husband & the wife were of coun or cōsēt ꝯ ꝯ disseisin should be made, then it is no remitter to the wife, because she is a disseisouresse. But if the husband were of couin & consent to the disseisin, & not ꝯ wife, thē such lease made to the wife is a remitter, because ꝯ no default was in the wife.

¶ Also, if such a discontinue had made estate of freeholde to the husband and the wife, made by endenture vppon condition. s. reseruing to the discontinue a certeyne rent, and for default of payment a reentre, & because that the rent is behinde, the discontinue entreth, of this rēt the woman shall haue assise of Nouel disseisin after the death of her husbande agaynst the discontinue, because that the condition was wholy adnulled, in so much as ꝯ woman was in her remitter, yet the husband with his wife could not haue assise because the husbande ys stopped.

¶ Also, if the husbande discontinue the tenements of his wife, and taketh estate agayne for terme of his life, the remainder after hys decesse to hys wyfe for terme of her lyfe, in this case this is no remitter to the wyfe durynge the lyfe of her husbande, because that durynge the life of the husband, the wyfe hath nothing in the free hold, but if in this case the wife ouerlyue the husband, this is a remitter

to

to the wife because that a free holde in lawe is fallen vpon her, mauger her wil, & in so much that shee can haue no accyon against none other person, and against her selfe shee can haue no accion, therefore she is in her remitter. For in this case though that the woman enter not in the tenementes, yet a straunger that hath cause to haue accion may sue his actiō against the woman of the same tenements, because she is tenaunt in lawe though shee be not tenaunt in dede, for tenaunt of franktenement in deede is hee, that if hee bee disseised of franktenemēt may haue assise, but the tenant in the lawe before his entre shall haue no assise, and if a man seised in fee of certeyne lande hath issue a sōne which taketh a wife, and the father dyeth seised, and after the sonne dyeth before any entre made by him into ỹ lande, ỹ wife of the sonne shalbe endowed in the land, and yet he had no franktenement in the deede, but he had a fee & a franktenement in law, & so note wel that a precipe q reddat may as wel be mainteined against him ỹ hath ỹ franktenemēt in lawe, as against him ỹ hath franktenement in dede.

¶ Also, if a tenant in the taile haue issue two sonnes of full age, and hee letteth the tayled lande to the elder sonne for terme of hys lyfe, the remaynder to the ponger sonne for terme of hys life, and after the tenant in the taile dieth, In this case ỹ elder sōne is not in his remitter because he toke estate of his father, but if ỹ elder sōne die without issue of his body, thē this

this is a remitter to ỹ yonger brother, because hee is heire in the taile, and a franktenement in law is fallen vppon him by force of ỹ remainder, & there is none against whom he may sue his action &c. In the same maner it is where a man is disseised & the disseisor dyeth thereof seised, & the tenements discende to his heire, & the heire of the disseysour maketh a lease to a man of the said tenements for terme of life, ỹ remainder to ỹ disseisour for terme of life, or in taile, or in fee, & the tenāt for terme of life dieth Now this is a remitter to ỹ disseisee &c. Causa qua supra.

¶ Also if tenant in the taile enfeffe his sonne and an other of the tayled land in fee, and liuerie of seisin is made to the other according to the deede, the sonne not knowinge thereof, nor agreeing to the feoffement, and after hee that tooke the liuerie of seysin dyeth, and the sonne occupyeth not the lande, nor taketh any profite of the lande during the lyfe of hys father, and after the father dyeth, nowe thys is a remitter to the sonne, because the freeholde is fallen vppon him by the survivour, and no defaut was in him, because he neuer agreed &c. in the life of his father, and there is none against whom he may pursue his writ of Formedon &c. For if a man bee disseised of certein land, and the disseysour maketh a deede of feoffement, whereof he enfeoffeth B. C. and D and the liuery of seisin is made to B. and C. but D. was not at the liuery of seisin nor neuer

ner agreed to the feoffment nor never wolde take the profites &c. And after B. & C. die, & D. overlyueth them, and the dissesy bringeth his writte, sur disseisin in the per, against the same D. he shal shew al ỹ matter & how ỹ he never agreed to the feoffement, and so hee shall discharge him selfe of dammages so that the demaundãt shal recouer no dãmage against him though that he be tenaunt of franketenement of the lãd. And yet the statut of Glocester wil that the disseisye shall recouer dammages in a writ of entre grounded vppon the nouel disseisin against him that is founde tenaunt. And this is a proofe in ỹ other case that in so much as the issue in the taile cõmeth to the franktenement not by his deede nor by his agreement but after the death of his father, this is a Remitter to him, in so much that he cã sue an action of formedon against none other person.

¶ Also if an Abbot alien the lande of his house to another in fee, and the alienee by hys deede chargeth the lande with a rent charge in fee, and after the aliene enfeoffeth ỹ Abbot w licence, to haue and to holde to the Abbot and his successours for ever, & after the Abbot dyeth, and another is chosen & made Abbot: In this case the Abbot that is the successour, and his couent be in their remitter, and shall holde the land discharged, because that the same abbot cannot haue an action by his writ of Entre Sine assensu capituli of ỹ same lands against none other person. In the same manner it is

where

where a Bishop or Deane or other such persons alyen &c. without assent &c. And after the Byshop taketh estate againe of the sayd lande by lycence to him, and to his successours, and after the Bishop dyeth, his successour is in his remitter as in the right of his Church, and shall defeate the charge &c. Causa qua supra.

Also if a man sue a false action agaynst tenaunt in the taile, as if a manne will sue against hun a writ of Entre in the Post, supposing by his writ that the tenaunt in the tayle had not his entre but by A. of B. that disseised the graundfather of the demaundaut, and that is false, and he recouereth against the tenaunt in the taile by defaut, and sueth execution, and after ỹ tenant in the taile dyeth, his issue may haue a writ of Formedon against him that recouered. and if hee will plede the recouerie against the tenaunt in the tayle, the issue may say that the sayde A. of B. disseysed not the graundefather of him that recouered in such manner as hys writ supposeth, and so he shal falsify his recouerie. Also suppose that that was true that the sayde A. of B. disseised the graundfather of the demaundaunt that recouered, & that after the disseisin the demaundant or his father, or his graundfather, by a deede had released to the tenaunt in the tayle all the right ỹ he had in the land &c. And this notwithstanding he sueth his writ of entre in the Post against the tenant in ỹ taile in the maner

as

as is aforesaide, and the tenaunt in the tayle pleadeth to him, that the saide I. of B. disseysed not his grãdfather as his writ supposeth, and vppon this they bee at issue, and the issue is found for the demaundant, whereby he hath iudgement to recouer, and sueth execution, and after the tenant in the tayle dieth, his issu may haue a writ of Formedon agaynst hym that recouered. And if he will plede the recouerie by action tryed against his father tenaunt in the taile, then hee may shew and plede the release made to his father, and so the action that was sued was fayne in the lawe &c. And yt seemeth that faine action is as much to say in English as fained action, that is to say, such action that though the wordes of his writ bee true, yet for certayne causes hee hath no cause nor title by the lawe to recouer by ỹ same action. And false action is, where the wordes of the writ bee false, and in the two cases beforesayde if the case were such that after such a recouerie, and execution thereof made, the tenaunt in the tayle had disseised him that recouered and thereof dyed seysed, whereby the lande also discended vnto his issue, this is a Remitter to the issue, and the issue is in by force of the tayle, and for that cause I haue put these two cases beforesayde, to enfourme thee (my sonne) that ỹ issue in the taile by force of a dyscent made to hym after a recouerie and execution thereof made against his auncestor, may bee as well in his remitter as

as he ſhould be by diſcent made to him after a diſcontinuāce made by his anceſter of ỹ tayled land by feffement in the countrey or otherwiſe.

¶ Alſo in the ſame caſe aforeſaide, if the caſe were ſuch that after the demaūdāt had iudgement to recouer againſt the tenaunt in tayle, and the ſame tenant in the taile dyed before any execution had againſt him whereby the tenements diſcende to his iſſue, and hee that recouered ſued a Scire facias to haue execution of the iudgement againſt the iſſue in the taile, the iſſue ſhal plede the matter as before is ſaid, & ſo ſhall proue that the recouerie was falſe or faint in the lawe, & ſo ſhall barre him to haue execution of the iudgement &c.

¶ Alſo if tenant in the taile diſcontinue the taile and die, and his iſſue bringeth a writte of Formedone againſt the diſcontinue beeinge tenaunt of the free holde of the lande, and the diſcontinue pleadeth that he is not tenant, but otherwiſe diſclaymeth from the tenancy in the lande, in this caſe the iudgement ſhalbee that the tenaunt go without day, and after ſuch iudgement the iſſue in the taile that is demaundaunt may well enter in the lande notwithſtandinge the diſcontynuaunce. And by ſuch entre he ſhalbe adiudged in his Remitter, and the cauſe is, beecauſe that if anie man ſue a Præcipe quod reddat againſt anie tenaunt of free holde, in which action the demaundaunt ſhall not recouer damages, and the tenaunt pleadeth not Non tenure, but otherwiſe diſclaimeth

meth in the tenancy, the demaundant may not auerre in the writ that he is tenant as ꝑ writ suppoſeth. And for that cauſe the demandãt after that, ꝑ iudgement is geeuen, that the tenaunt ſhall goe without day, may enter into the tenementes demaunded, the which ſhalbee as great aduauntage to him in the lawe, as if hee had iudgement to recouer agayuſt the tenaunt. And by ſuch entre he is in the remitter by force of the taile: but where the demaũdant recouereth dãmages againſt the tenaunt, there the demaundant may auerre that he is tenant as the writ ſuppoſeth, & that for the aduauntage of the demaundant for to recouer his dãmages, or els he ſhal not receiue his dãmages, the which damages be or were geuen him by the lawe.

¶ Alſo if a man be diſſeiſed, and the diſſeyſour die his heire b ing in by diſcent, now the entre of the diſſeiſee is taken away. And if the diſſeiſy bring his writ of entre vppon the diſſeiſin in the Per againſt the heire, & the heire diſclaymeth in the tenancy &c. the demandant may auerre his writ that he is tenaunt as the writ ſuppoſeth if he will, for to recouer his dãmages. But yet if he will leaue ꝑ auerrement &c. he may lawfully enter into the lãd, becauſe of the diſclaimer, notwithſtanding that his entre before was taken away. And that was adiudged before my maſter ſir Robert Danby late chiefe Iuſtice of the common place, and his Companions.

¶ Also where the entre of a man is lawfull though ꝑ he take estate to him when he is of full age for terme of life, or in taile or in fee, this is a remitter to him, if such taking of estate bee not by deede indented, or by matter of record ꝑ shal conclude or stop him. For if a man be disseised & thereof taketh estate of the disseisour without deede or by deede poll, that is a good remitter to the disseisy.

¶ Also, if a mā let lād for terme of life to another which alieneth to another in fee, & ꝑ alienor maketh estate to the lessor, this is a remitter to the lessor because his entre was lawful.

¶ Also if a man be disseised, and the disseisor letteth the land to the disseisy by deede poll or without deede for terme of yeares, whereby ꝑ disseisy entreth, this entre is a remitter to the disseisy. For in such case where the entre of a manne is lawful, and a lease is made to him, though that he claime by wordes in the countrey that hee hath estate by force of such lease, or sayeth openly that he claymeth nothinge in the land, but by force of such lease, yet thys is a remitter to him, for such clayme in the countrey is nothing to purpose: but if he clayme in a court of Record that hee hath estate but by force of such lease & not otherwise, then hee is concluded &c.

¶ Also, if two toyntenauntes seised of certein land in fee, the one being of full age, the other within age bee disseysed, & the disseisour dieth seised and his issue entreth, the one of the

toynte-

iointenants being then within age, & after that he commeth to ful age, the heire of the disseisor letteth the lande to ỹ same iointenants for terme of their lines, this is a remitter as to the halfe to him that was within age, because that he is seised of ỹ moity that belongeth to him in fee, because his entre was lawful. But the other iointenant hath in the other halfe but estate for terme of life by force of the leale, because his entre was taken away &c.

¶ Warrantie.

IT is commonly said that there be three maner of warranties, that is to say, warrantie lineall, warrantie collaterall, and warrantie that beginneth by disseisin. And it is to wete that before the statut of Gloucester al warrãties which descended to thẽ which were heirs to them that made the warranty, were barres to the same heires to demãd any lands or tenementes against those warranties, except the warranties that began by disseysin, for such warrantie was neuer barre to ỹ heire, because the warrantie began by wrong, that is to say, by disseisin.

¶ Warrantie that beginneth by disseisin is in such forme. As where there is father & sonne, & the sonne doth purchase land &c. and letteth the same land to his father for terme of yeares & the father by his dede thereof enfeoffeth another in fee, and bindeth him and his heires to

warranty, & if the father die whereby ꝯ warrantie descendeth to his sonne this warrantie shall not barre the sonne, for notwithstãding this warrantie the sonne may well enter in the lãd, or haue an assise against the aliene if he will, because ꝯ warranty began by disseisin. For whẽ ꝯ father ꝯ had no estate but for terme of yeres made a feoffement in fee, this was a disseysin to ꝯ sonne of ꝯ franketenemẽt ꝯ then was in the sonne. In the same maner it is if the sonne let vnto the father ꝯ land to holde at will, & after ꝯ father maketh a feoffemẽt with warranty &c. And as it is said of ꝯ father so may it be sayd of euery other auncester &c.

¶ In the same maner it is if tenãt by Elegit, tenãt by statut marchant, or tenant by statute staple, make a feoffemẽt in fee wt warrantie &c. this shall not barre the heire ꝯ ought to haue ꝯ lande because that such warranties beginne by disseisin.

¶ Also if a wardẽ in chiualry or warden in socage make a feoffemẽt in fee, in fee taile, or for terme of life wt warranty &c. Such warranties be no barres to ꝯ heires to whõ the land shall discend, because that they begin by disseisin.

¶ Also if the father and the sonne purchase certeine landes or tenementes, to haue and to holde to them iointly &c. & after the father alyeneth the whole to another and bindeth him & his heires to warranty &c. and after the father dieth, this warrantie shal not barre ꝯ sonne of the moity that belõged to him of the same tenements

nements, because that as to the moity that belonged to the sonne, ỹ warranty began by dissesyn.

¶ Also, if A. of B. be seised of a mease, & F. of G. ỹ hath no right to ẽter in ỹ sãe mese clayming to hold ỹ sãe mese to him & to his heires, enter into ỹ same mese, but A. of B. thẽ is cõtinually dwelling in ỹ sãe mease, in thys case the possession of ỹ franktenemẽt shalbe alway adiudged in A. of B. & not in F. of G. because ỹ in such case where two be in one mese, or in other tenemẽts, & ỹ one claimeth by one title, & the other by an other title, the law shal adiudge him in possessiõ that hath right to haue the possession of ỹ same tenement. But in the case aforesaid if F. of G. make a feoffemẽt to certein barretours & extorcioners in the countrey for to haue maintenaunce of them of the same mese by a dede of feffement & warrant, by force of which ỹ said A. of B. dare not dwel in the same mese, but goeth out of ỹ sae mese, this warrantie beginneth by dissesin, because that such a feoffement was cause that the said A. of B. left the possession of the same mese.

¶ Also, if a man that hath no right to entre in anothers tenements, enter into the said tenementes, and incontinent maketh a feoffement to other persons by his dede with warrantie, & delivereth to them seisin, thys warrantie beeginneth by dysseysin, because that the dissesin and the feoffement were made as it were at one tyme. And that this is law, ye may

may ſee it in a plee. An. 31. Ed. 3. in a writ of Formedon in the reuerſion.

¶ Warrantie lyneall is where a man ſeyſed of certaine lande in fee maketh a feffement by his dede to another, and bindeth him and hys heires to warranty, & hath iſſue & dieth, & the warranty diſcendeth to his iſſue, this is a lyneal warrãty. And the cauſe why this is a lyneal warranty, is not becauſe ỹ the warrãtie diſcẽdeth from the father to his heire, but the cauſe is, becauſe ỹ if no ſuch deede with warrantie had beene made by the father, then the right of the tenementes ſhould diſcend to the heire, and the heire ſhould conuey the diſcent from the father &c. For if there bee father and ſonne, and the ſonne purchaſe tenementes in fee, and the father diſſeiſeth the ſonne thereof and alyeneth it to another in fee by his deede, and by the ſame deede bindeth him and hys heires to warrant the ſame tenementes and ſo forthe, and the father dyeth, nowe is the ſonne barred to haue the ſayd tenementes, for hee may by no ſuit nor by anye other meanes haue the ſayde tenementes, becauſe of the ſaid warrantie. And that is a collateral warrantie, and yet the warrantie dyſcendeth lyneally from the father to the ſonne. But becauſe that if no ſuch deede with warrantye hadde bene made, the ſonne in no manner myght conuey the tytle that hee hath of the tenementes from his father to hym, in ſo much that hys father had no eſtate nor ryght in the tene-

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ments, therfore such warrantie is called collaterall warrantie, In so much that he ꝑ made the warranty is collateral to ꝑ title of the tenements, and ꝑ is as much to say, that hee to whom warranty discended, coulde not conuey the title that he had in the tenements by hym that made the warrãty in this case, if no such warranty had ben made.

¶ Also, if there bee graundfather, father and sonne, & the graũdfather is dissesed in whole possession the father releaseth by hys deede & warrantie &c. & dyeth, and after the graundfather dieth, now is the sõne barred of the tenements by the warrãty of his father, & this is called lineal warranty, because that if no such warrãty had ben made, ꝑ sõne myght not haue conueyed the right of the tenementes to hym, nor shew how he is heire to the graundfather but by meanes of the father &c.

¶ Also, if a man haue issue three sonnes and is disseysed, and the elder sonne releaseth to the disseysour by his deede with warrauntye &c. & dieth without issue, and after this the father dyeth, this is a lineal warranty to ꝑ yonger sonne, because that though the elder sonne dyed in the lyfe of the father, yet by possibilitie it might bee that he might conuey to hym the tytle of the lãd by his elder brother, if no such warrantie had bene made. For it myght bee that after the death of ꝑ father, the elder brother entred into the tenements & died without issue, and then the yonger sonne shall conuey to

to hi ꝯ title by his elder brother. But in this case if the yonger sonne release with warrantie to the disseisor & dieth without issue, this is a collaterall warrantie to the eldest sonne, because ꝯ of such land as was to the other, the elder brother by no possibilitie myght convey to him the title by meane of ꝯ yonger brother.

¶ Also, if tenaunt in the taile hath issue three sonnes and discõtinue the taile in fee, and the middle sonne releaseth by his deede to the discontinue and bind him & his heires to warrãtise &c. and after the tenãt in the tayle die and the middle dieth without issue, now is the elder sonne barred to haue anye recouerye by a writ of Formedon because that the warrantie of ꝯ middle brother is collateral to him, in so much that he may by no maner convey to him by force of the taile any discent by the myddle brother, & therefore it is a collateral warranty. But if in this case the elder brother die with out issue, nowe the yonger brother may well haue a Formedon in the discender, & recouer ꝯ same lande, because that the warrantie of the middle brother is lineal to the yonger brother because it may be ꝯ by possibilitie the middle brother may be seised by force of the taile after the death of his elder brother, & then the yongest brother may convey his title of discent by the middle brother &c.

¶ Also, if tenaunt in the taile discontinue the taile & hath issue, and dye, and the vncle of the issue release to the discontinue ꝯ warranty &

die

die without iſſue, this is a collateral warrãtie to the iſſue in the taile, becauſe ỹ the warrantie diſcendeth vpon the iſſue, which cannot conuey himſelfe to the tayle by meane of hys vncle.

¶ Alſo, if tenaunt in the taile hath iſſue two daughters & dye, & the elder daughter entreth into the whole, & thereof maketh a feoffemẽt in fee wt warrantie, & after the elder daughter dyeth without iſſue, in this caſe ỹ yõger daughter is barred as to the moity, & as to the other halfe ſhe is not barred, for as to ỹ moitye that belongeth to ỹ ponger daughter, ſhe is barred becauſe that as to the moity that belongeth to her, ſhe cãnot conuey the diſcent by ỹ meanes of her elder ſiſter. And therfore as to ỹ moity that is a collateral warranty, but as to the other moity which belongeth to her elder ſiſter by ỹ ſame elder ſiſter ỹ warranty is no barre to the ponger ſiſter, becauſe that ſhe may conueigh her diſcent as to that moity that belonged to her elder by ỹ ſame elder ſiſter. And ſo as to that moity that belongeth to ỹ elder ſiſter the warranty as to that is lineal to ỹ yõger ſiſter.

¶ And note wel ỹ as to hym that demaundeth fee ſimple by any of hys auncеſters, hee ſhalbe barred by lineall warrantye which diſcendeth vpon him, except it bee reſtrayned by ſome ſtatute, but he which demãdeth fee tayle by a writ of Formedon in the diſcender, ſhall not be barred by lineall warrantie, except hee

hane

haue ynough by diſcēt in fee ſimple by ỹ ſame auncetter that made the warranty, but a collateral warranty is barre to hym ỹ demaundeth fee, & alſo to hym that demaundeth fee tayle, without any other diſcent of fee ſimple, except in caſes that be reſtrained by the ſtatut & other caſes for certein cauſes as ſhalbe layd hereafter.

¶ Alſo, if land be geuen to a man and to hys heires of his body begotten, the which taketh a wife & haue iſſue a ſonne betwene them, and the huſband diſcontinueth the taile in fee, and dyeth, & after the wife releaſeth to the diſcontinue in fee with warranty and dieth, and the warrāty diſcendeth to the ſōne, this is a collateral warranty. But if tenemēts be geeuen to the huſbande & the wife, & to the heires of their two bodyes begotten which haue iſſue a ſonne, & the huſband diſcontinueth the taile & dieth, & after the wife releaſeth with warrāty & dieth, this warranty is but a lineall warrāty to the ſonne, for the ſonne ſhall not bee barred in this caſe to ſue his writ of Formedō, except he haue inough by diſcēt in fee ſimple by his mother becauſe ỹ their iſſue in a writte of Formedon ought to conuey to him the right as heire to his father and to hys mother of their two bodies begotten by fourme of the gyft. And ſo in ſuch caſe the warrantye of the father and the warrantie of the mother bee but as lineal warranties to the heire &c. And note well that in euery caſe where a man demaundeth

deth tenementes in fee tayle by a writ of Formedon, if any of the issues in the taile that had possession or that hath possession make a warranty &c. if he that sueth the writ of Formedon might by any possibility by matter that might bee in deede conueie to him by him that made the warrantie by the forme of the gift. This is a lineal warranty, & not collateral.

¶ Also, if a man haue issue three sonnes, and hee geueth lande to hys eldest sonne, to haue and to hold to him & to the heires of his body begotten, and for default of suche issue the remainder to the middle sonne, to him, and to the heires of his bodie begotten, and for defaute of suche issue the remaynder to the youngest sõne, and to his heires of hys bodye begotten, in this case if the eldest sonne discontinue the tayle in fee, and bynde hym, and his heires to warrantie, and dye without issue, this is a collateral warranty to the middle sonne, and hee shalbe barred to demaunde the same lande by force of the remainder, because that the remainder is his title, and his eldest brother is collateral to ỹ title which begynneth by force of the remainder.

¶ In the same maner it is if ỹ middle sonne had the same lande by force of the remaynder, because that his eldest brother made no discõtinuance, but died without issue of his bodye, and after the middle sonne maketh a discontynuance with warranty &c. and dyeth wythoue

out issue, this is a collaterall warrantie to the yongest sone, & also in this case if any of ꝑ said sonnes be disseised, & the father that made the gift release to the dysseysour al hys right &c. with warranty, this is a collateral warranty to ꝑ sonne vpon whom the warranty discended, Causa qua supra. And so note well ꝑ where a man ꝑ is collaterall to the title &c. releaseth wt warranty, ꝑ is a collateral warranty.

¶ Also, if the father geeue lande to his elder sonne, to haue & to hold to him & to the heires males of his body begotten, the remainder to the seconde sonne &c. if the eldest brother alien in fee with warrãty &c. and hath issue female & dieth without issue male, this is not a collateral warranty to the second sonne, nor shall not hurt him of his accion by Formedon in the remainder, because that the warranty discendeth to the daughter of the eldest sonne, & not to the second sonne. For euery warrantie that discendeth, discendeth to him that is heire vnto him which made the warranty by the cõmon lawe &c.

¶ Also, if lande be geuen to a man and to his heires males of his body begotten, and for default of such issue the remainder therof to his heires females of his bodye begotten, and after the donee in the tayle maketh a feoffement in fee with warrantie accordinge, and hath issue a sonne & a daughter and dieth, this warrantie is but a lineale warranty to the sonne, to demaunde by writ of Formedon in the discendye

cendze. And it is but lyneal to the daughter to demaund the same lande by writ of Formedon in the remainder, if her brother die without heire male, because that shee claymeth as heire female of the body of her father begotte. But in this case if her brother in his life release to the discontinue with warrantie &c. And after die without issue, this is a collateral warrantie to the daughter, because that she cannot cõney to her the right that she hath by force of ỹ remainder by any meane of discent by her brother, & therfore the brother is collateral to the title of his sister, & therefore his warrantie is collateral &c.

¶ Also I haue heard say that in ỹ time of king Richard the second, there was a Justice in the common place dwelling in Kent, called Rikhil, that had issue diuers sonnes. And hys entent was, that his eldest sonne should haue certeine landes to him and to his heires of his bodie begotten, and for defaute of issue, the remainder to his second sonne and so forth. And so the thirde sonne &c. And because that he would that none of his sonnes shoulde alien or make warranty for to barre or to hurt the other that should be in the remainder &c. He caused to be made an indenture to such effect, that is to say, that ỹ lands and tenements were geeuen to his eldest sonne vppon thys condition, that if the eldest sonne aliened in fee or in fee taile &c. or any of his sonnes alyened &c. ỹ then their estate should cease & should bee voide

hoyde.and that then the sayde landes or tene-
mentes immediatly should remaine to the se-
conde sonne.& to the heires of his body begot-
ten,and that vppon the same condition. s.that
if the seconde sonne alien &c.that thē his estate
should cease,& that then the same landes & te-
nemēts should remaine to the third sonne,& to
the heires of his body begotten, and so forth,
the remainder to other of his sonnes, & liuerie
of seisin was made according. But it seemeth
by reason ꝑ al such remainders in ꝑ forme be-
forsaid be voyd,and of no value,and that for
three causes. One cause is because euerie re-
mainder that beginneth by a deede,it behoueth
that the remainder be in him to whō the re-
mainder is tayled by force of the same deede
when the liuery of seisin is made to him that
hath the franketenement.

And such remainder was not to the second
sonne at the time of liuery of seisin in the case
beforesaid &c.

The second cause is yt the first sonne a-
lien the tenementes in fee, then is the frankte-
nement and the fee simple in the alienee and in
none other. and if the donour had any reuersi-
on by such alienatiō,the reuersion is discontī-
ued,then though that by some reason it may
bee that such remainder shall beginne his be-
inge and his growinge immediatly after such
alyenation made to a straunger that hath by
the same alyenatyon frankетenement and fee
simple, and also if such remaynder shoulde

be

be good, then might he enter vppon the alienee where he had no maner of right before ỹ alienatiõ, which should be inconueniẽt. The third cause is when ỹ condition is such ỹ if ỹ eldest sõne alien &c. ỹ his estate shal cease, or shalbee void &c. then after such alienation &c. may the donour entre by force of such cõditiõ &c. as it semeth, & so ỹ donor or his heires in such case ought more sooner to haue ỹ land, thẽ ỹ seconde sonne ỹ had no right before such alienation &c. & so it semeth ỹ such remainders in the case be forsaid be void.

¶ Also, at the common law before the statut of Glouceſter, yt tenaunt by the curteſie had aliened in fee with warrantye accordaunt, after his decease this was a barre to ỹ heire &c as it appeareth by the wordes of the same statut. But it is remedied by the same statute, that the warranty of the tenaunt by the curteſye shalbe no barre to the heire, except he haue ynough by diſcent by the tenaunt by the curteſie, for before the said estatute that was a collaterall warrauntie to the heire, because hee coulde not conuey anie title of diſcent to the tenementes by the tenaunt by the curteſie, but onely by his mother or other of his auncesters &c. ỹ that is the cause why it was collaterall warrantie. But if a manne enherite, take a wife, which haue issue a sonne betweene them and the father dyeth, & the sonne entreth into the lande, and endoweth his mother, and after his mother alieneth that that she hath in her

dower

dower to another in fee, with warrãtie accor-ding, and after dyeth, and the warrantye di-cendeth to the sonne, nowe the sonne shall bee barred to demaunde the same lande because of the said warrantie, because that such collate-ral warrantie of tenaunt in dower is not re-medied by any statute. The sãe law is where tenant for terme of life maketh an alienation with warrantie &c. and dieth, and the warrã-tie discendeth to him that had the reuersion or the remainder &c. they shalbee barred by such warrantie &c.

¶ Also, in the said case if it so were ꝑ when the tenaunt in dower alieneth &c. the heire was within age, and also at that time that the warranty discendeth vpon him, he was with in age, in thys case the heire may after enter vpon the alienee notwithstandinge the war-ranty discended &c. because that no laches shall bee adiudged in the heire within age, that hee entred not vppon the alienee in the lyfe of the tenaunt in dower, but if the heire was with-in age at the time of the alienation, and after he came to full age in the life of the tenaunt in dower, and so being of full age, he entred not in the lyfe of the tenaunt in dower, and after the tenant in dower dyeth there parauenture the heire shalbe barred by such warranty bee-cause it shalbe accompted his folly ꝑ he beinge of full age, entred not in the life of the tenaunt in dower &c.

¶ Also it is spoken in the end of the sayd

estatute

eſtatute of Glouceſter, that ſpeaketh of the alienation & warrantie made by the tenant by the curteſie, in ſuch fourme.

¶ Alſo in ỹ ſãe maner the heire of ỹ woman after the death of his father & mother ſhal not be barred of action, if he demaund the heritage of ỹ mariage of his mother by a writ of Entre that his father alyened in the tyme of hys mother. whereof no fine is leuied in the kings court &c. And ſo by force of the ſame ſtatute if ỹ husband of the wife alien ỹ heritage of mariage of his wife in fee with warrantye &c. by his deede in the countrey, this is clere lawe ỹ this warrantie ſhal not barre the heire except he haue ynough by diſcent &c. But the doubt is if that the husband alien the heritage of his wife by fine leuyed in the kings courtes with warrantie &c. If this ſhall barre the heire without any diſcent in value &c. And as to that, I will ſay here certein reaſõs that I haue heard ſay in this matter. I heard my maſter ſir Richarde Newton late chiefe Juſtice of the common place ſay once in the ſame place, that ſuch warrantie that the baron maketh by fine leuied in the kinges court ſhall barre the heire though that he haue nothing by diſcent, becauſe the ſtatut ſayeth, whereof no fine is leuyed in the kings court &c. And ſo by his opinion, this warrantie by fine &c. abydeth yet a collaterall warrantie as it was at the common lawe not remedyed by the ſaid eſtatute, becauſe that the ſayde eſtatute acceypteth the

alyenation by fine with warrantie. And some other haue sayd & yet say the contrary, & thys is their proofe, that as by the same Chapiter of the sayd estatute, it is ordeined ꝑ the warrantie of the tenaunt by the curtesie shall not barre the heire except he haue ynough by dyscent &c. though ꝑ the tenāt by the curtesy leuy a fine of the same lands with warranty &c. as strongly as he can: yet this warranty shal not barre the heire except he haue assets or ynough by discent &c. And I beleue that this is law, and therfore they say that it should be inconuenient to vnderstand the statut in such fourme that a man that hath not but in the right of his wife, may by fine leuyed by him leite of the the tenements that hee hath but in ryght of hys wyfe with warrantie &c. barre the heire of the sayde tenementes wythout discent of the fee simple &c. where the tenant by curtesie cannot doe it. But they haue sayde, that the statute shalbe vnderstood after this forme that is to saye, where the statute speaketh whereof no fine is leuyed in the kinges court, that is to say. wherof no lawful fine is rightfully leuyed in the same kings court, and that is, whereof no fine of the husbande & his wyfe is leuyed in the kinges court, for at the tyme of the making of the said statute, euery estate of landes or tenements that any man or womā had that should discend to his heire, was fee simple without condition or vppon condition in deede or in law. And because that such

fine

fine then might lawfully haue bene leuyed by the husband & his wife, and that if the heires of the husband warrant &c. such warrãty shall barre the heire &c.

¶ And so they say that this is the vnderstanding of the said statute, for if the husbande and the wife made a feoffement in fee by deede in the countrey, the heire after the decease of the husband & the wife shall haue a writ of Entre Sur cui in vita &c. notwithstandinge the warranty of ẏ husband. Then if no such exception was made in the statut of ẏ fine leuyed &c. thẽ the heire should haue the writ of entre &c. notwithstanding ẏ fine leuied by the husband & ẏ wife, because ẏ the words of the statute before the exception of the fine leuied &c. be generally &c. that is to say, that the heire of the woman after the death of her husbande and the wife, shal not be barred of action if he demaũd the heritage or the mariage of his mother by a writ of Entre that his father aliened in the time of his mother, and so it shoulde be in the case of the statute except such wordes were, that is to say, whereof no fine is leuied in the kinges court. And so they say that this is to vnderstande, whereof no fine by the husbande and the wife is leuied in the kinges court the which is lawfully leuyed in such case. For yf the Iustices haue knowledge ẏ a man ẏ hath nothing but in the right of his wife, will leuy a fyne in his name onelie, they will not nor ought not to take such fine to be leuied by the

husband only wout naming the wife therfore enquire of this matter.

¶ Also it is to wete ꝑ in such wordes where the heire demaundeth ꝑ heritage or mariage of his mother, this word (where) is a distinctiue, & is as much to say, if the heire demaūde ꝑ heritage of his mother, that is to be vnderstode the tenemēts that his mother had in fee simple by discent or by purchase, or if the heire demaund the mariage of his mother, ꝑ is to say, the tenemēts ꝑ were geuen vnto hys mother in frankmariage.

¶ Also where it is moued in diuers deedes these wordes in latin. Ego & heredes mei &c. warrantizabimus & imperpetuum defendemus, it is to see what effect hath that worde defendemus in such deedes. And it semeth ꝑ it hath not the effect of warrantise, nor comprehendeth any clause of warrantise, for if it should bee so that it taketh effect or cause of warrantise, thē it should be put in some fines leuied in ꝑ kings court. And a man neuer sawe that this worde defendemus was in fine but onely this worde warrantizabimus, by which it semeth that this verbe warrantiso, maketh warranty, and is the cause of warrantize, and none other worde in our lawe.

¶ Also if tenant in the taile bee seysed of tenements deuysable by testament after the custome &c. And the tenaunt in the taile alieneth the tenements to his brother in fee, and hath issue and dyeth, and after his brother deuiseth

by

by his testamēt the same tenemētes to another in fee, & bindeth him and his heires to warrātise &c, and dieth without issue, it seemeth that this warrantie shal not barre the issue in the tayle if he wil sue his writ of Formedon, because that his warrantie discended not to the issue in the taile, in so much as the vncle of the issue was not bound by force of the same warrantie in his life. And ꝑ cause ꝑ he coulde not warrāt the land in his life, is in so much that the deuisee could not take any execution or effect but after his decease, & in so much that the vncle in his life was not hold to warrantye, such warraūtise may not discend from hym to the issue in the taile &c. for nothing may discend from the aūcestor to his heire, but ꝑ same that was in the auncestor. Also a warrantye maye not goe after the nature of tenementes by custome, but onely after ꝑ forme of ꝑ cōmō law. For if tenant in taile be seised of tenemēts in borough english, where the custome is that al tenemēts of the same borough, ought to discend to the yongest sonne, & hee discontinueth the taile with warrantise &c. & hath issue two sonnes & dieth seised of other lāds & tenemētes in the same borough in fee simple to the value and more of the tenementes tayled, & so forth, yet the yongest sonne shall haue a Formedon of the tenementes tayled, & shall not be barred by ꝑ warrantise of his father, though ynough to him discended in fee simple frō the same father after the custome, for thys that the war-

rantie discendeth vpon the elder brother that is in full lyfe &c. & not vpon the yonger sone, In the same maner it is of collateral warrãtise made of such tenemẽts where the warrãtise discendeth to the elder sonne &c. this shall not barre the yonger sonne &c. In ỹ same maner it is of tenementes in the shire of Kent, which be called Gauelkind, ỹ which tenemẽts be departable among the brethren &c. after the custome &c. if any such warrantie bee made by their auncestours, such warranty discendeth alonely to the heire that is heire by the cõmon lawe, & not to al ỹ heires which are heires of such tenements after the custome &c.

¶ Also, if tenaunt in tayle haue issue two daughters by diuers bentres, and dyeth and the daughters entre, and a straunger disseiseth them of the same tenementes, and one of the daughters releaseth by her deede to the disseisour al her ryght, and byndeth her & her heirz to warrantise, and dyeth without issue, in this case ỹ sister that suruiueth may well ẽter and put out the disseisour of al the tementes, for this that such warrantise is no discontynuance nor collateral warrantise to the sister that suruiueth, for this that they bee of halfe bloud, and the one may not bee heire to the other after the common lawe. But otherwise it is where there bee daughters of tenauntes in the taile by one venter.

¶ Also, if tenaunt in the tayle let tenementes to another for terme of life, the remaider to an other

other in fee, and the collateral auncestor cõfirmeth the estate of the tenãt for terme of life, & bindeth him and hys heires to warrantise for terme of life of ẏ tenãt for terme of life & dieth, & ẏ tenant in the tayle hath issue & dyeth, now this issue is barred to aske ẏ tenemẽts by writ of Formedon during the life of the tenant for terme of life, because of ẏ collateral discent vppon the issue in the taile. But after the decease of ẏ tenant for terme of life, the issue shall haue a Formedon &c. And vppon this I haue heard a reason that this case shall proue by an other case, that is to say, if a man let his land to another, to haue and to holde vnto him and to his heires for terme of anothers lyfe, & the lessour dyeth, lyuinge him to whose lyfe &c. And a straũger entreth into the land, that the heire of the lessee maye put him out for this ẏ in the case next aforesaid, in so much that a mã may bynde hym and hys heires to warraunt to the tenaunt for terme of lyfe, aloneiye durynge the lyfe of the tenant for terme of lyfe, & the warrantise discendeth to the heire of him that made the warrantise, the which warrãtise is no warraunt ẏse of enheritaunce, but aloneiye for terme of anothers lyfe, by the same reason where tenementes bee let to a man, to haue and to holde to him and to hys heires for terme of anothers lyfe, yf the father dye, liuing him to whose life &c. his heire shall haue the tenementes lyuinge him to whose life &c. For they haue sayd, ẏ if a man graunt

an ānuitie to another to haue & to take to him & to his heires for terme of anothers life if the grauntee die &c. That after his heire shal haue the annuitie during ỹ life of him to whole life &c. Quære de ista materia &c.

¶ But where such a leale or graūt is made to a man & his heires for term̄ of yeres, in this case the heire of ỹ lessee & the grātee shall neuer haue after the death of the lessee or ỹ grātee that, that is so letten or graunted, for this that it is a chattel real, & al chattels reals by the common lawe shall come to the executors of the graūtee or the lessee, and not to the heire &c.

¶ Also in some cases it may be, that howbeit that a collateral warrantise be made in fee &c. yet such warrantise may be defeated & aniented. As the tenant in the taile discōtinueth the taile in fee, & the discontinue is disseyed, & the brother of the tenaunt in the taile releaseth by his dede to the disseisour al his right &c. with warrantise in fee, & dieth without issue, & the tenant in the taile hath issue and dieth, nowe the issue is barred of his accion by force of the collateral warrantise discending vpon him, but if after this the discontinue enter vpō the disseisour, thē may the heires in the taile haue his accion of Formedō &c. for this ỹ the warrant is aniented & defeated. For when ỹ warrantise is made vnto a man vpon any estate ỹ thē he had, if the estate be defeated, the warrantie is defeated.

¶ In

¶ In the same maner it is if the discontinuo make a feoffemẽt in fee reseruing to him certein rent, & for defaut of paymẽt a reentre &c. & a collateral aũcestor releaseth to ỹ feffee ỹ hath estate vpon condition &c. & dyeth without issue though ỹ the warrantie discended vpõ ỹ issue in the taile, yet, if after the rent be behind, & the discontinue entreth into the lande &c. then the issue in the tayle shall haue his recouery by a writ of Formedon, for this ỹ the warrantye collateral is defeated. And so if any such collateral warrantie be pleaded against the issue in the taile in his accion of Formedon, he maye shew the matter as is aforesaid, how ỹ warranty is defeated, and so he may wel maintein his accion.

Also, if tenẽt in the taile make a feffemẽt to hys vncle, & after hys vncle maketh a feoffemẽt in fee wt warrantise &c. to another. & after the feoffee of ỹ vncle enfeoffeth againe ỹ vncle ī fee, & after the vncle enfeoffeth a straunger in fee wout warrãtise, & dieth without issue, & ỹ tenant in ỹ taile wil brīg his writ of Formdon against the straūger ỹ was last feoffee, & that by the vncle, in this case the issue shal neuer be barred by the warrantie ỹ was made by the vncle to ỹ said first feoffee of his vncle, for this that the said warrantise was defeated & anẽted, for this that the vncle toke againe to him as great estate of hys sayde first feoffee to whom the warrantie was made, as the same feffee had of him. And ỹ cause why the warrantie

rantie is aniented, in this case, is this, ꝑ is to say, ꝑ if the warrantise were in his force, then the vncle shall warrant vnto himselfe, ꝑ may not be, but if the feoffee made estate to ꝑ vncle for terme of life or in fee taile, sauing ꝑ reuersion vnto him &c. Or ꝑ he make a gift in the eayle to the vncle, or a lease for terme of lyfe, the remaynder ouer &c. In this ꝑ warrantise is not al vtterly aniented, but it is put in suspence during the estate that the vncle had, for after this ꝑ the vncle is dead ẅout issue, then he in the reuersion or he in the remainder shal barre the issue in the taile of his writ of Formedon by the collateral warrantyse in suche case &c. But otherwise it is where the vncle had as great estate in the land by the feffee to whō the warrantise was made as the feoffee had of him &c.

¶ Also, if the vncle after such feffemēt made with warrantise, or a release made by hym ꝙ warrātise be attaynt of felony or outlawed of felony, such collateral warrāty shall not barre nor greeue the issue in ꝑ taile, for this ꝑ by the attainder of felony, ꝑ bloud is corrupt betwene them &c.

¶ Also, if tenant in ꝑ taile be disseised, & after maketh a release to the disseisor ꝙ warrātise in fee, & after the tenant in the taile is attaint, or outlawed of felony, & hath issue & dyeth, in this case the issue in the taile may enter vpon the disseisour.

¶ And ꝑ cause is for this, ꝑ nothing maketh discon-

discontinuance in this case but ꝯ warranty, & the warrãtie may not discend to ꝯ issue in the taile, for this ꝯ the bloud is corrupt betweene him that made the warrantise & ꝯ issue in the taile. ¶ For the warrantyse alway abideth at ꝯ common law, & ꝯ cõmon law is such, ꝯ when a man is outlawed or attaint of felony, which outlawry is an attaynder in ꝯ law, ꝯ ꝯ bloud betweene him & his sonne and al other which should be saide his heires, is corrupt, so ꝯ nothing by discent may discend to any that may be his heire by the cõmon law. And ꝯ wife of such a mã ꝯ is so attait shal neuer be endowed in the teneñts of her husbãd so attaint &c.

¶ And the cause is because men should more eschewe to do felony &c. But the issue in the taile, as to the tenements tayled, is not in such case barred, because he is ĩheritable by force of the statute, and not by the course of the cõmõ law. And therefore such attaynder of hys father or of his auncester in the tayle &c. shal not put him out of his right, that hee should haue by force of the tayle.

¶ Also, if tenaunt in the tayle enfeoffe hys vncle which enfeffeth another with warrantie &c. if after the feoffee by hys deede release to the vncle al maner of warrantie, or al maner of couenants reals, or al maner of demaũdes, by such release the warranty is extinct. And if the warrantie in suche case bee pleaded agaynst the heire in the tayle that bryngeth hys writ of Formedon to barre the heire of hys

his accion, if the heire haue and plede the sayde release &c. he shall defeate the plee in barre &c. And many other causes & matters there bee, whereby a man may defeate warranties.

¶ And it is to weete, that in the same maner as collaterall warrantie may bee defeated by matter in deede or in lawe, in the same maner may lineal warrantie bee defeated &c. For if ỹ heire in the taile bring a writ of Formedon, & a lyneal warrantie of his auncester inherytable by force of ỹ taile be pleaded agaynst hym, with that, ỹ allets to him discended of fee simple by the same auncester ỹ made the warrantie, if the heire that is demaundant may annul & defeate the warraūtie, this sufficeth to him, for the discent of other tenemẽts of fee simple make nothing to barre the heire wythout the warranty &c.

FINIS.

¶Here beginneth the Table of this present booke.

NOw haue I made for thee my sonne three bookes.
The first is of estates ỳ men haue of lands or tenements, that is to say.
Of tenant in fee simple.
Tenaunt in fee taile.
Tenaunt in the taile after possibilitie of issue extinct.
Tenaunt by the curtesy of England.
Tenant in dower.
Tonaunt for terme of life.
Tenaunt for terme of yeres
Tenaunt at will by the common law.
Tenaunt at will by the custome of the maner.

The second booke.

¶The second booke is of Homage.
Fealtie.
Escuage.
Knights seruice.
Socage.
Frank almoigne, or free almes.
Homage auncestrel.
Graund sergeantie.
Pety sergeantie.
Tenure in burgage.
Tenure in villenage.
Of three manner of rentes, that is to say, rent seruice.

Rent

Rent charge.
And rent secke.
¶ And these two smal bookes, haue I made for thee for to vnderstand better certein chapiters of the auncient bookes of tenures.

The thirde booke.

¶ The thirde booke is of parceners.
Of ioyntenauntes.
Tenants in common.
Estates of landes or tenementes vppon condition
Discentes that take away entres.
Continual claime.
Releses.
Confirmations.
Attornements.
Remitters.
Of garranties, that is to say.
Garrantie lineal.
Garrantie collateral.
And garrantie that beginneth by disseisin.

¶ And knowe thou my sonne that I will not that thou beleue that al that that I haue sayde in the saide bookes is law, for that will I not take vppon mee nor presume. But of those thinges that be not law enquire & learne of my wise maisters learned in the law.
Notwithstanding though that certeine thinges that bee noted and specified in the sayde bookes bee not lawe, yet such thinges shal

make

make thee more apt & able to vnderstand, and learne the arguments and the reasons of the lawe. For by the arguments and the reasons in the lawe, a man may more sooner come to the certeintie and to the knowledge of the lawe. Lex plus laudatur quando ratione probatur.

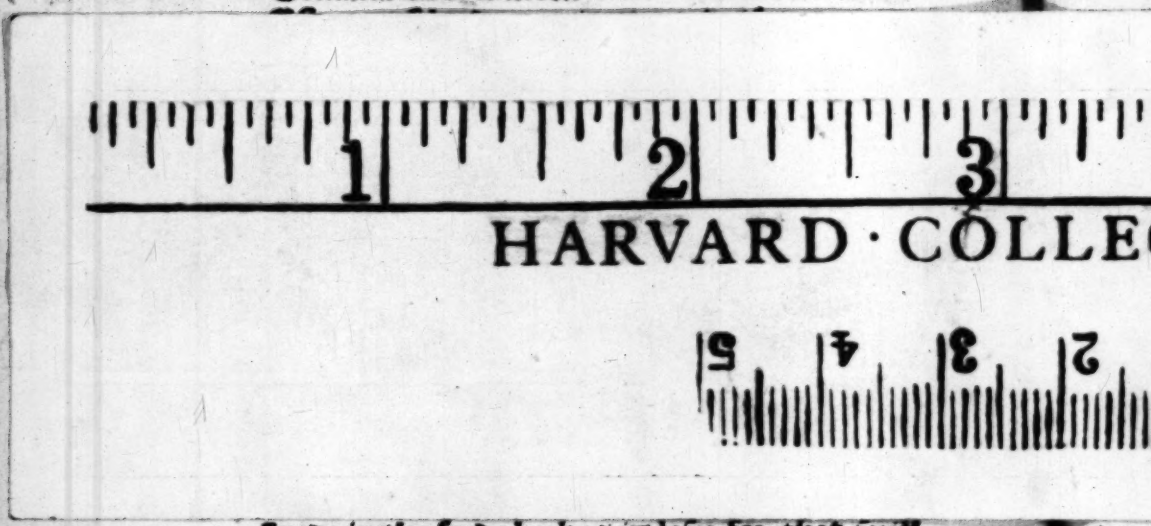
Imprnted at London in Fleestrete within Temple Barre, at the signe of the Hand and Starre, by Rychard Tottill.
1583.

Cum priuilegio.

Rent charge.
And rent secke.
¶ And these two smal bookes, haue I made for thee for to vnderstand better certein chapiters of the auncient bookes of tenures.

The thirde booke.

¶ The thirde booke is of parceners.
Of ioyntenauntes.
Tenants in common.



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